AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 158 August 16, 2016

Pages 54477–54708

OFFICE OF THE FEDERAL REGISTER

1985

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 81 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800** **(Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register
Vol. 81, No. 158
Tuesday, August 16, 2016

Agricultural Marketing Service

PROPOSED RULES
Continuance Referendum:
  Pistachios Grown in California, Arizona, and New Mexico, 54520
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54550–54551

Agriculture Department

See Agricultural Marketing Service
See Food and Nutrition Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54551–54552

Centers for Disease Control and Prevention

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54578–54581

Centers for Medicare & Medicaid Services

PROPOSED RULES
Medicare and Medicaid Programs:
  Programs of All-Inclusive Care for the Elderly, 54666–54707

Coast Guard

PROPOSED RULES
Anchorage Grounds:
  Lower Chesapeake Bay, Cape Charles, VA; Meetings, 54531–54532
NOTICES
Meetings:
  Update to Alternative Planning Criteria National Guidelines, 54584–54585

Commerce Department

See Foreign-Trade Zones Board
See Industry and Security Bureau
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54554

Commodity Futures Trading Commission

RULES
Securities Industry and Financial Markets Association, et al. v. United States Commodity Futures Trading Commission; Final Response, 54478–54498

Drug Enforcement Administration

NOTICES
Importers of Controlled Substances; Applications:
  Actavis Laboratories FL., Inc., 54602–54603
  ALMAC Clinical Services Inc., 54602
  AMRI Rensselaer, Inc., 54603–54604
  Bellwyck Clinical Services, 54603
  Cody Laboratories, Inc., 54602
  Fresenius Kabi USA, LLC, 54601–54602
Manufacturers of Controlled Substances; Applications:
  Chemtos, LLC, 54604

Employment and Training Administration

NOTICES
Environmental Impact Statements; Availability, etc.:
  Sacramento Job Corps Center; Power Line Easement Alignment Alteration, 54605–54606

Energy Department

See Federal Energy Regulatory Commission
NOTICES
Meetings:
  Advanced Scientific Computing Advisory Committee, 54568
  Environmental Management Site-Specific Advisory Board Chairs, 54569–54570
  Environmental Management Site-Specific Advisory Board, Portsmouth, 54570
  President's Council of Advisors on Science and Technology, 54568–54569
  Secretary of Energy Advisory Board, 54567
  State Energy Advisory Board, 54568

Environmental Protection Agency

RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  DC; Infrastructure Requirements for the 2012 Fine Particulate Matter National Ambient Air Quality Standards, 54504–54506
  Iowa; Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards, and the Adoption of the 1997 Standard, 54502–54504
  Virginia; Case-by-Case Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard, 54506–54510
Pesticide Tolerances:
  Flumioxazin, 54510–54512
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
  DC; Infrastructure Requirements for the 2012 Fine Particulate Matter National Ambient Air Quality Standards, 54532
  Virginia; Case by Case Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard, 54532–54533
NOTICES
Pesticides:
  Guidance for Registrants on the Determination of Minor Use, 54576

Federal Aviation Administration

NOTICES
Meetings:
  RTCA Special Committee 225, Rechargeable Lithium Battery and Battery Systems, 54647–54648
Release of Airport Property:
  Enterprise Municipal Airport, Enterprise, AL, 54647

Federal Communications Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54576–54577

Federal Deposit Insurance Corporation

NOTICES

Terminations of Receivership:
  10084, First Piedmont Bank, Winder, GA, 54577

Federal Energy Regulatory Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54571–54572, 54574–54575
Applications:
  Erie Boulevard Hydropower, LP, 54572–54573
  FFP Project 132, LLC, 54575–54576
Combined Filings, 54573
Complaints:
  Goodyear Tire and Rubber Co. v. Entergy Texas, Inc., 54573
Petitions for Declaratory Orders:
  Grand Mesa Pipeline, LLC, 54570–54571
Refund Effective Dates:
  Panda Patriot LLC, 54571

Federal Highway Administration

NOTICES

Surface Transportation Project Delivery Program:
  TxDOT Audit Report, 54648–54658

Federal Reserve System

NOTICES

Change in Bank Control:
  Acquisitions of Shares of a Bank or Bank Holding Company, 54577
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 54577–54578

Federal Retirement Thrift Investment Board

NOTICES

Meetings; Sunshine Act, 54578

Federal Transit Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54658–54660

Fish and Wildlife Service

RULES

Migratory Bird Hunting:
  Seasons and Bag and Possession Limits for Certain Game Birds, 54514–54518

Food and Drug Administration

RULES

Draft Guidance for Industry:
  Calorie Labeling of Articles of Food in Vending Machines, 54501–54502
Small Entity Compliance Guides:
  Calorie Labeling of Articles of Food in Vending Machines, 54499–54501

Food and Nutrition Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Supplemental Nutrition Assistance Program—Quality Control, 54552–54553

Foreign–Trade Zones Board

NOTICES

Applications for Reorganization under Alternative Site Framework:
  Foreign-Trade Zone 283–West Tennessee Area, 54555
Approval of Expanded Subzone Status:
  Space Systems/Loral, LLC Palo Alto, Menlo Park, Mountain View and San Jose, CA, 54554
Proposed Production Activities:
  Foreign-Trade Zone 134; Wacker Polysilicon North America LLC, Charleston, TN, 54554

Forest Service

NOTICES

Meetings:
  Mineral County Resource Advisory Committee, 54553

Health and Human Services Department

See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Homeland Security Department

See Coast Guard
See Transportation Security Administration

Housing and Urban Development Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54586, 54588
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  ConnectHome Baseline Survey Data Collection, 54588–54589
Meetings:
  Moving to Work Research Advisory Committee, 54586–54588

Industry and Security Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Foreign Availability Procedures, 54555

Institute of Museum and Library Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Public Libraries Survey FY 2016–2018, 54608–54609
  STEM Expert Facilitation of Family Learning in Libraries and Museums: A National Leadership Grants Special Initiative, 54609–54610

Interior Department

See Fish and Wildlife Service
See Land Management Bureau
See Ocean Energy Management Bureau
See Reclamation Bureau

Internal Revenue Service

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54662

International Trade Commission

NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
  Certain Quartz Slabs and Portions Thereof, 54600–54601

Justice Department

See Drug Enforcement Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
  Attorney Student Loan Repayment Program Electronic Forms, 54604–54605
Proposed Consent Decrees:
  United States v. Varca Ventures, Inc. and Wildcat Mining Corp., 54605

Labor Department

See Employment and Training Administration

Land Management Bureau

NOTICES
Call for Nominations:
  Central and Northern California Resource Advisory Councils and Carrizo Plain National Monument Advisory Committee, 54590–54591
Oil and Gas Leases:
  Wyoming; Proposed Reinstatement of WYW178492, 54591
Plats of Surveys:
  Wyoming, 54589–54590

National Archives and Records Administration

NOTICES
Records Schedules; Availability, 54606–54608

National Credit Union Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54608

National Foundation on the Arts and the Humanities

See Institute of Museum and Library Services

National Institutes of Health

NOTICES
Government-Owned Inventions; Availability for Licensing, 54583
Meetings:
  National Cancer Institute, 54582–54583
  National Institute of Allergy and Infectious Diseases Special Emphasis Panel, 54581
Prospective Grant of Start-up Exclusive License:
  Small Molecule Therapeutic Compounds Encompassed Within the Licensed Patent Rights for the Treatment of Thioesterase Deficiency Disorder, 54581–54582

National Oceanic and Atmospheric Administration

RULES
Fisheries of the Northeastern United States:
  Atlantic Bluefish Fishery; Quota Transfer, 54519
  Small–Mesh Multispecies Fishery; Adjustment to the Northern Red Hake Inseason Possession Limit, 54518
PROPOSED RULES
Fisheries of the Northeastern United States:
  Atlantic Sea Scallop Fishery; Amendment 19, 54533–54549
NOTICES
Endangered and Threatened Species:
  Draft Recovery Plan for Puget Sound/Georgia Basin Yelloweye Rockfish and Bocaccio, 54556–54558
Exempted Fishing Permits:
  Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic, 54558–54559
International Trade Data System Test Concerning the Electronic Submission of Certain Data Required for Exports, 54559–54561
Meetings:
  Pacific Fishery Management Council, 54558
Regional Peer Review Processes:
  Magnuson-Stevens Act Provisions; National Standard 2—Scientific Information, 54561–54564

Nuclear Regulatory Commission

NOTICES
Combined License Applications:
  Duke Energy Carolinas, LLC; William States Lee III Nuclear Station, Units 1 and 2, 54622–54624
Facility Operating and Combined Licenses:
  Applications and Amendments Involving Proposed No Significant Hazards Considerations, etc., 54610–54622
Meetings; Sunshine Act, 54622

Ocean Energy Management Bureau

NOTICES
Atlantic Wind Lease Sales:
  Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore North Carolina (Kitty Hawk), 54591–54598

Patent and Trademark Office

NOTICES
Changes in Accelerated Examination Practice, 54564–54567

Pipeline and Hazardous Materials Safety Administration

RULES
Pipeline Safety:
  Clarification of Terms Relating to Pipeline Operational Status., 54512–54514
NOTICES
Hazardous Materials:
  Termination of Competent Authority Manufacturing Approvals, 54661–54662
  Termination of Designated Approval Agencies Approvals, 54660–54661

Reclamation Bureau

NOTICES
Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions, 54598–54600

Rural Business-Cooperative Service

RULES
Guaranteed Loanmaking and Servicing Regulations; correction, 54477

Rural Utilities Service

RULES
Guaranteed Loanmaking and Servicing Regulations; correction, 54477

Securities and Exchange Commission

NOTICES

Meetings; Sunshine Act, 54624

Self-Regulatory Organizations; Proposed Rule Changes:

- Bats BZX Exchange Inc., 54628–54631
- Bats EDGA Exchange, Inc., 54624–54626
- Bats EDGX Exchange, Inc., 54640–54643
- Chicago Board Options Exchange, Inc., 54631–54632, 54643–54645
- Fixed Income Clearing Corp., 54626–54628
- NASDAQ Stock Market LLC, 54634–54639
- Options Clearing Corporation, 54632–54634
- The Depository Trust Co., 54639–54640

Trading Suspension Orders:

- Safecode Drug Technologies Corp., and Dynamic Ventures Corp., 54631

Small Business Administration

NOTICES

Meetings:

- Advisory Committee on Veterans Business Affairs, 54645
- Interagency Task Force on Veterans Small Business Development, 54645–54646

Social Security Administration

PROPOSED RULES

Revisions to Rules of Conduct and Standards of Responsibility for Appointed Representatives, 54520–54531

Substance Abuse and Mental Health Services Administration

NOTICES

Meetings:

- Advisory Committee for Women's Services, 54583–54584

Tennessee Valley Authority

RULES

Protection of Archaeological Resources, 54498–54499

Trade Representative, Office of United States

NOTICES

Meetings:

- China's Compliance with WTO Commitments, 54646–54647

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Transit Administration

See Pipeline and Hazardous Materials Safety Administration

Transportation Security Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

- Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License, 54585–54586

Treasury Department

See Internal Revenue Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 54662–54663

Separate Parts In This Issue

Part II

Health and Human Services Department, Centers for Medicare & Medicaid Services, 54666–54707

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
4279 54477
4287 54477
Proposed Rules:
983 54520

17 CFR
1 54478
3 54478
23 54478
37 54478
43 54478
45 54478
46 54478
170 54478

18 CFR
1312 54498

20 CFR
Proposed Rules:
404 54520
416 54520

21 CFR
11 54499
101 (2 documents) 54499, 54501

33 CFR
Proposed Rules:
110 54531

40 CFR
52 (3 documents) 54502, 54504, 54506
180 54510
Proposed Rules:
52 (2 documents) 54532

42 CFR
Proposed Rules:
423 54666
460 54666

49 CFR
192 54512
195 54512

50 CFR
20 54514
648 (2 documents) 54518, 54519
Proposed Rules:
648 54533

Rules and Regulations

Federal Register
Vol. 81, No. 158
Tuesday, August 16, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 4279 and 4287

RIN 0570–AA85

Guaranteed Loanmaking and Servicing Regulations; Correction

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service; USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rule published in the **Federal Register** of June 3, 2016, entitled "Guaranteed Loanmaking and Servicing Regulations."

DATES: Effective August 16, 2016.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, Rural Development, Business Programs, U.S. Department of Agriculture, 1400 Independence Ave. SW., Stop 3224, Washington, DC, 20250–3224; email: *Brenda.griffin@wdc.usda.gov;* telephone number: (202) 720–6802.

SUPPLEMENTARY INFORMATION

Need for Correction

On June 3, 2016, the Agency published a final rule for the Business and Industry (B&I) Guaranteed Loan Program (81 FR 35984). Since then, the Agency has discovered three necessary technical corrections.

First. The Agency is clarifying that the list of eligible regulated lenders, which are identified in § 4279.29(a), can include "other financial institutions" that are, like the other entities already listed in said paragraph, "subject to credit examination and supervision by an agency of the United States or a State." This clarification implements the intent of the Agency to offer eligibility to all regulated lenders. As currently written, an unintended consequence is that some of the program's historically highest performing lenders may be excluded from eligibility.

Second. The Agency is correcting an inconsistency between a provision in § 4279.131(b)(1)(ii), associated with how the value of collateral is calculated for newly acquired equipment and a provision in § 4279.144, identifying when an appraisal of collateral is required. Briefly, the first provision allows the value of the collateral to be based on the purchase price of the newly acquired equipment without the need for an appraisal regardless of the purchase price, while the second provision as currently written, requires an appraisal for such newly acquired equipment when the purchase price exceeds $250,000. This poses a contradiction for newly acquired equipment whose collateral value, based on purchase price, is greater than $250,000—is an appraisal required or not? The intent of the Agency is found in the first provision and the correction being made is to modify the second provision to indicate that an appraisal is not required for newly acquired equipment whose collateral value is based on the purchase price. This correction provides clarity to the regulation as well as saves borrowers the added processing time and expense of obtaining an appraisal when purchasing new equipment in excess of $250,000.

Third. One of the changes that the final rule put into effect was to limit interest accrual associated with guaranteed loans "closed on or after" the effective date of the rule (*i.e.,* August 2, 2016). This provision was supposed to have been addressed consistently throughout the provisions. The Agency identified two places in bankruptcy provisions (§ 4287.170(b)(3)(i) and (ii)) where this change was unintentionally not made. This notice corrects those oversights.

List of Subjects for 7 CFR Parts 4279 and 4287

Loan programs—Business and industry, Direct loan programs, Economic development, Energy, Energy efficiency improvements, Grant programs, Guaranteed loan programs, Renewable energy systems, Rural areas, and Rural development assistance.

Accordingly, 7 CFR chapter XLII is amended by making the following correcting amendments:

PART 4279—GUARANTEED LOAN MAKING

■ 1. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

Subpart A—General

§ 4279.29 [Amended]

■ 2. Amend the first sentence of § 4279.29(a) by adding "or other financial institution" after "State chartered bank".

Subpart B—Business and Industry Loans

■ 3. Revise the first sentence of § 4279.144 introductory text to to read as follows:

§ 4279.144 Appraisals

* * * * *

Lenders must obtain appraisals for real estate and chattel collateral when the value of the collateral exceeds $250,000, unless the chattel is newly-acquired equipment and the value is supported by a bill of sale. * * *

* * * * *

PART—SERVICING

■ 4. The authority citation for part 4287 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932(a); 7 U.S.C. 1989.

Subpart B—Servicing Business and Industry Guaranteed Loans

§ 4287.170 [Amended]

■ 5. Amend § 4287.170(b)(3)(i) introductory text and (b)(3)(ii) by removing "approved" and adding "closed" in its place.

Dated: August 9, 2016.

Samuel H. Rikkers,

Administrator, Rural Business-Cooperative Service.

Dated: August 10, 2016.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2016–19430 Filed 8–15–16; 8:45 am]

BILLING CODE 3410–XY–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 23, 37, 43, 45, 46, and 170

RIN 3038–AE27

Final Response to District Court Remand Order in Securities Industry and Financial Markets Association, et al. v. United States Commodity Futures Trading Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final response to district court remand order.

SUMMARY: This release is the Commodity Futures Trading Commission's ("Commission" or "CFTC") final response to the order of the United States District Court for the District of Columbia in *Securities Industry and Financial Markets Association, et al.* v. *United States Commodity Futures Trading Commission,* ("*SIFMA* v. *CFTC*"), remanding eight swaps-related rulemakings to the Commission to resolve what the court held to be inadequacies in the Commission's consideration of costs and benefits, or its explanation of its consideration of costs and benefits, in those rulemakings. In this release the Commission addresses cost-benefit issues raised and suggestions for rule changes made in comments submitted in response to the Commission's Initial Response to the remand order.

DATES: August 16, 2016.

FOR FURTHER INFORMATION CONTACT: Martin B. White, Assistant General Counsel, Office of the General Counsel, (202) 418–5129, *mwhite@cftc.gov;* Frank Fisanich, Chief Counsel, Division of Swap Dealer and Intermediary Oversight, (202) 418–5949, *ffisanich@cftc.gov;* Philip Raimondi, Attorney Advisor, Division of Market Oversight, (202) 418–5717, *praimondi@cftc.gov;* Michael A. Penick, Economist, Office of the Chief Economist, (202) 418–5279, *mpenick@cftc.gov;* Megan Wallace, Senior Special Counsel, Office of International Affairs, (202) 418–5150, *mwallace@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Overview and Scope

This release is the Commission's final response to the order of the United States District Court for the District of Columbia in *SIFMA* v. *CFTC*[1] remanding eight swaps-related rulemakings to the Commission. It addresses issues raised by public comments submitted in response to a previous **Federal Register** release setting forth the Commission's initial response to the remand order.[2]

The present release is organized as follows. Part II describes the *SIFMA* litigation, the district court order, and the Commission's Initial Response. Part III discusses the Commission's general approach to extraterritorial costs and benefits in this release and potential methods for addressing extraterritorial cost-benefit issues. Part IV supplements the consideration of costs and benefits in the preambles to the original rulemakings and in the Initial Response by describing and evaluating the cost-benefit issues raised in the comments. Section IV.A discusses certain issues related to the costs of the extraterritorial application of the remanded rules. Section IV.B discusses certain issues related to the benefits of the extraterritorial application of the remanded rules. Section IV.C discusses the Commission's efforts to mitigate costs of the extraterritorial application of the Commission's rules, including the Commission's substituted compliance program and other actions. Section IV.D discusses consideration of substantive rule changes outside the scope of the remand order that may affect cross-border costs and benefits. Section IV.E discusses commenters' concerns about "market fragmentation," primarily in the context of the Swap Execution Facility ("SEF") Registration Rule. Section IV.F discusses cost-benefit issues related to the use of a test for the application of transaction-level Dodd-Frank rules to non-U.S. swap dealers based on dealing activities physically located in the United States as described in a November 2013 Division of Swap Dealer and Intermediary Oversight staff advisory. It also discusses cost-benefit issues related to a test for the application of the SEF Registration Rule based on the provision of swap execution services to traders located in the United States as described in a Division of Market Oversight guidance document, also issued in November 2013. Section IV.G discusses certain additional cost-benefit issues specific to particular rules. Part V discusses commenters' recommendations for changes in the substance of the remanded rules and evaluates whether these changes are justified in light of the international cost-benefit considerations addressed in Part IV and other relevant considerations. Finally, Part VI concludes that, taking into account the facts and analysis in the original rulemaking preambles as well as the additional consideration of costs and benefits in the Initial Response and this release, the remanded rules are legally sound, and the Commission will not propose changes in the context of the *SIFMA* v. *CFTC* remand order.

The Commission emphasizes that the purpose of the discussion of costs and benefits in Part IV and of potential rule changes in Parts V and VI is to respond to the mandate of the *SIFMA* remand order and to evaluate the present legal sufficiency of the remanded rulemaking proceedings. The discussion and conclusions in this release should not be interpreted to mean that the Commission will not consider other actions with respect to the rules, including substantive amendments, looking forward. To the contrary, the Commission will amend the rules in the future when amendment is in the public interest, whether in response to new information, experience, or the evolution of the markets and the international legal landscape.

II. Background[3]

A. The District Court Litigation and Decision

On December 4, 2013, three trade associations sued the Commission in the United States District Court for the District of Columbia, challenging the Commission's Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations[4] ("Cross-Border Guidance" or "Guidance") as well as the extraterritorial application of fourteen of the rules promulgated by the Commission to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act[5] regarding swaps.[6]

The fourteen challenged rules were promulgated by the Commission in twelve rulemakings.[7] On September 16,

---

[1] No. 13–1916 (PLF), 67 F. Supp. 3d. 373 (D.D.C. Sept. 16, 2014).

[2] Initial Response to District Court Remand Order in Securities Industry and Financial Markets Association, et al. v. United States Commodity Futures Trading Commission, 80 FR 12555 (Mar. 10, 2015) ("Initial Response").

[3] For a more detailed description of the background of this release, see Initial Response, 80 FR at 12556–58.

[4] 78 FR 45292 (July 26, 2013).

[5] Public Law 111–203, 124 Stat. 1376 (2010).

[6] *See SIFMA,* 67 F. Supp. 3d at 384. The plaintiffs were the Securities Industry and Financial Markets Association, the International Swaps and Derivatives Association, and the Institute of International Bankers. *Id. See also id.* at 437–38.

[7] *See id.* at 437–38. Three of the fourteen challenged rules, informally identified by the court

2014, the court issued a decision, granting summary judgment to the Commission on most issues but remanding without vacatur ten rules, promulgated in eight rulemakings.[8] The court held that the preambles for these rules did not adequately address the costs and benefits of the extraterritorial application of the rules pursuant to section 2(i) of the Commodity Exchange Act ("section 2(i)").[9] Specifically, the court held that the Commission needed to address whether and to what extent the costs and benefits as to overseas activity may differ from those related to the domestic application of the rules.[10]

The eight remanded rulemakings are:

Real-Time Public Reporting of Swap Transactions Data [11] ("Real-Time Reporting Rule");

Swap Data Recordkeeping and Reporting Requirements [12] ("SDR Reporting Rule");

Registration of Swap Dealers and Major Swap Participants [13] ("Swap Entity Registration Rule");

Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rule; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants [14] ("Daily Trading Records," "Risk Management," and "Chief Compliance Officer" Rules);

Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant" [15] ("Swap Entity Definition Rule");

Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps [16] ("Historical SDR Reporting Rule");

Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants [17] ("Portfolio Reconciliation Rule"); and

Core Principles and Other Requirements for Swap Execution Facilities [18] ("SEF Registration Rule").

B. The District Court's Rulings on Consideration of Costs and Benefits

The district court remanded the eight rulemakings "for further proceedings consistent with the Opinion issued this same day." [19] As the Commission explained in its Initial Response to the remand order, the court's opinion included a number of holdings and observations that provide guidance as to the actions the Commission must take on remand.

1. The court held that, because Congress made the determination that the swaps rules apply overseas to the extent specified in section 2(i), the CEA provision on consideration of costs and benefits, section 15(a), does not require the Commission to consider whether it is necessary or desirable for particular rules to apply to overseas activities as specified in section 2(i).[20] Indeed, the court explained, the Commission cannot, based on a consideration of costs and benefits, second-guess Congress's decision that swaps rules apply to certain overseas activities.[21] As a result, the court stated that "the only issues necessarily before the CFTC on remand would be the *substance* of the Title VII rules, *not* the scope of those Rules' extraterritorial applications under 7 U.S.C. 2(i)." [22]

2. At the same time, the court held that, in considering costs and benefits of the substantive regulatory choices it makes when promulgating a swaps rule, the Commission is required to take into consideration the fact that the rule, by statute, will apply to certain overseas activity.[23] Thus, the Commission's consideration of costs and benefits of the application of the rule must encompass both foreign and domestic business activities.[24] The court held that the Commission failed to meet this requirement because, the court stated, in the cost-benefit discussions for the rules at issue, the Commission did not state explicitly whether the identified costs and benefits regarding overseas activities are the same as, or differ from, those pertinent to domestic activities.[25]

3. The court held that the Commission has discretion either to consider costs and benefits of the international application of swaps rules separately from domestic application or to evaluate them together, "so long as the cost-benefit analysis makes clear that the CFTC reasonably considered both." [26] The district court found that, at the time the rules at issue in the litigation were promulgated, foreign swaps regulations were still under development so that costs of possible duplicative regulation were hypothetical and did not have to be considered.[27] The court noted that this fact raised the possibility that the costs and benefits of the rules' extraterritorial applications "were essentially identical to those of the Rules' domestic applications" so that the Commission "functionally considered the extraterritorial costs and benefits" of the rules "by considering the Rules' domestic costs and benefits." [28] However, the court concluded that it did not need to address that possibility because the cost-benefit discussions in the rule preambles gave "no indication" that this was so.[29] The court further noted that foreign swaps regulations passed since the promulgation of the rules at issue in the litigation "may now raise issues of duplicative regulatory burdens," but that "the CFTC may well conclude that its policy of substituted compliance largely negates these costs." [30]

4. Finally, the court noted that "[p]laintiffs raise no complaints regarding the CFTC's evaluation of the general, often unquantifiable, benefits and costs of the domestic application of the Title VII Rules." [31] As a result, the court held, "[o]n remand, the CFTC would only need to make explicit which of those benefits and costs similarly apply to the Rules' extraterritorial applications." [32]

C. The Commission's Initial Response to the Remand Order

On March 10, 2015, the Commission published its Initial Response to the district court remand order. In that release, the Commission described the district court litigation and order and took two substantive actions.

First, the Commission supplemented the discussion of costs and benefits in the preambles of the remanded rulemakings by stating that it:

> hereby clarifies that it considered costs and benefits based on the understanding that the swaps market functions internationally, with many transactions involving U.S. firms

---

as the "Daily Trading Records," "Risk Management," and "Chief Compliance Officer" Rules, were promulgated as part of a single rulemaking. *Id.*

[8] *SIFMA*, 67 F. Supp. 3d 373. For a more complete description of the decision, *see* the Commission's Initial Response, 80 FR 12555.

[9] *SIFMA*, 67 F. Supp. 3d at 430–33.

[10] *Id.* at 434–35.

[11] 77 FR 1182 (Jan. 9, 2012).

[12] 77 FR 2136 (Jan. 13, 2012).

[13] 77 FR 2613 (Jan. 19, 2012).

[14] 77 FR 20128 (Apr. 3, 2012).

[15] 77 FR 30596 (May 23, 2012).

[16] 77 FR 35200 (June 12, 2012).

[17] 77 FR 55904 (Sept. 11, 2012).

[18] 78 FR 33476 (June 4, 2013).

[19] *SIFMA*, 67 F. Supp. 3d at 437.

[20] *Id.* at 431.

[21] *Id.* at 432; *see also id.* at 434–35 & n.35.

[22] *Id.* at 434–35.

[23] *Id.* at 431–32.

[24] *Id.*

[25] *Id.*

[26] Id. at 433.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.* at 435.

[31] *Id.*

[32] *Id.*

taking place across international boundaries; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. The Commission considered all evidence in the record, and in the absence of evidence indicating differences in costs and benefits between foreign and domestic swaps activities, the Commission did not find occasion to characterize explicitly the identified costs and benefits as foreign or domestic. Thus, where the Commission did not specifically refer to matters of location, its discussion of costs and benefits referred to the effects of its rules on all business activity subject to its regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under section 2(i). In the language of the district court, the Commission "functionally considered the extraterritorial costs and benefits," and this was because the evidence in the record did not suggest that differences existed, with certain limited exceptions that the Commission addressed.[33]

Second, to further inform its consideration of costs and benefits on remand, the Commission solicited comments on four questions:

1. Are there any benefits or costs that the Commission identified in any of the rule preambles that do not apply, or apply to a different extent, to the relevant rule's extraterritorial applications?
2. Are there any costs or benefits that are unique to one or more of the rules' extraterritorial applications? If so, please specify how.
3. Put another way, are the types of costs and benefits that arise from the extraterritorial application of any of the rules different from those that arise from the domestic application? If so, how and to what extent?
4. If significant differences exist in the costs and benefits of the extraterritorial and domestic application of one or more of the rules, what are the implications of those differences for the substantive requirements of the rule or rules?[34]

The Commission requested that commenters focus on information and analysis specifically relevant to the inquiry required by the remand order, and supply relevant data to support their comments.[35]

The Initial Response stated that, following review of the comments, the Commission would publish a further response to the district court remand order, which would include any necessary supplementation of the Commission's consideration of costs and benefits for the remanded rules. The Commission also stated that it would consider whether to amend any of the remanded rules based on information developed in this process.[36]

D. Comments in Response to the Commission's Initial Response

The Commission received four comments in response to its Initial Response to the remand order: A five-page comment jointly filed by the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association ("ISDA–SIFMA"); a three-page comment filed by the Japanese Bankers Association ("JBA"); a two-page comment filed by UBS Securities LLC ("UBS"); and a twenty-one page comment filed by the Institute of International Bankers ("IIB").[37] The substance of the comments is discussed in detail in the remainder of this release.

Briefly, ISDA–SIFMA cautioned against an overly narrow conception of the burdens of overseas application of Commission rules, stating that, in addition to costs such as registration fees and expenses to construct and administer compliance systems, foreign entities would incur additional costs of "engag[ing] with an unfamiliar, non-domestic regulator and face uncertainty regarding the ramifications of being subject to a new regime." [38] The comment stated that "internal conflicts and customer resistance frequently may follow." [39] ISDA–SIFMA further stated that these costs and uncertainties function as barriers to engagement in U.S. markets, potentially resulting in market fragmentation and decreased liquidity available to U.S. persons.[40] ISDA–SIFMA stated that these costs must be weighed against what ISDA–SIFMA described as "attenuated or minimal benefits" from Commission rules where "foreign regulations . . . meet the objectives outlined by the G–20 jurisdictions." [41]

As evidence of market fragmentation, ISDA–SIFMA referred to ISDA research indicating a reduced percentage of transactions by European swap dealers with U.S. swap dealers in the market for euro denominated interest rate swaps following the implementation of the SEF Registration Rule.[42] ISDA–SIFMA made suggestions for specific substantive changes in two remanded rules. In the Swap Entity Definition Rule, it recommended greater use of safe harbors to reduce uncertainty for businesses hedging financial risk in applying the de minimis exception for determining swap dealer status.[43] In the SDR Reporting Rule, it recommended that the Commission "re-examine" the requirement of Commission rule 45.2(h) that swap counterparties who are not Commission registrants make their books and records available to the Commission and other U.S. authorities.[44]

ISDA–SIFMA also urged the Commission to undertake greater harmonization with foreign jurisdictions. In connection with the SEF Registration Rule, ISDA–SIFMA stated that there was a "stark contrast" between what it described as "very rigid execution methods" under the Commission's rule and "greater flexibility" under the rules that the European Union plans to implement, and urged the Commission to "re-examine its approach." [45] ISDA–SIFMA also supported greater international harmonization in the area of swap data reporting.[46] ISDA–SIFMA further stated that significant costs would be incurred if the Commission implemented the test for the application of certain Commission rules based on swap dealing activities within the United States by non-U.S. swap dealers set forth in the Division of Swap Dealer and

---

[33] 80 FR at 12558 (internal citation omitted).

[34] *Id.*

[35] *Id.*

[36] *Id.* at 12555.

[37] The IIB comment also had a thirteen-page appendix consisting of a comment letter previously filed in response to another Commission request for comments, but covering largely similar subject matter to the primary IIB comment. Comment letters are available on the Commission's Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1564.*

[38] ISDA–SIFMA at 2. ISDA–SIFMA stated that "[s]imple redeployment of the Commission's apparently domestic previous cost-benefit analysis" would not yield new information or distill lessons from experience to date with the Commission's rules and would "miss a valuable opportunity to contribute to the global discussion regarding resolution of cross-border issues." *Id.* However, in making this observation, ISDA–SIFMA stated that "it is not our purpose in this letter to express a view on what further actions are necessary in order to satisfy the 'reasonable consideration' and related requirements of the remand order." *Id.* at 2 n.4.

[39] *Id.* at 2.

[40] *Id.*

[41] *Id.* The reference to G–20 objectives is to the 2009 commitment by the G–20 group of major industrial nations to implement regulations for the over-the-counter derivatives market, including requirements for clearing, trading on exchanges or electronic trading platforms, and reporting of information on derivatives contracts to trade repositories. *See* Leaders' Statement, The Pittsburgh Summit (Sept. 24–25, 2009) at 20, *https://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.* Of the ten rules remanded in *SIFMA,* three fall within the specific scope of the 2009 G–20 commitment—the SEF Registration Rule and the SDR and Historical SDR Reporting Rules. Other rules contribute to the broader G–20 objective of reducing risk to the financial system from the use of derivatives.

[42] ISDA–SIFMA at 3.

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] *Id.*

Intermediary Oversight Advisory, Applicability of Transaction-Level Requirements to Activity in the United States (CFTC Staff Advisory No. 13–69, Nov. 14, 2013) (''DSIO Advisory'').[47] Finally, with respect to the use of substituted compliance as a means for addressing issues of duplicative regulation, ISDA–SIFMA stated that ''broad, holistic'' substituted compliance ''can be of substantial help.'' [48]

JBA stated that banks are faced with legal and consulting fees to comply with Dodd-Frank rules and that remaining areas of ambiguity cause them to manage their business in a conservative manner.[49] Banks have also incurred costs to comply with regulatory requirements that differ across jurisdictions, including where comparability is not established.[50] With respect to foreign banks registered as swap dealers, JBA stated that the Commission's initial cost-benefit analysis did not take into consideration the fact that entity-level requirements apply to all of a bank's swaps business even though, for a non-U.S. bank, transactions with U.S. persons account for only 10% of that business.[51] JBA further stated that foreign banks not registered as swap dealers have avoided transacting with U.S. financial institutions to avoid U.S. regulation, inconveniencing their customers and increasing risks and costs for maintaining market liquidity.[52] JBA also stated that customers have avoided transacting with subsidiaries of foreign banks incorporated in the U.S. in order to avoid U.S. regulation, resulting in costs to book transactions with these customers with non-U.S. entities to maintain business relationships.[53] JBA identified the reporting of swap data to trade repositories as one area where banks have been subject to differing requirements in multiple jurisdictions, resulting in increased compliance costs.[54] JBA therefore recommended that the swap data reporting process should be established ''through an industry-wide initiative.'' [55] JBA identified the swaps push-out rule as a second area of particular concern.[56] However, this statutory provision [57] was not part of the *SIFMA* litigation or remand order.

UBS focused on the benefits of the SEF Registration Rule in promoting a level playing field for market participants, facilitating access to liquidity providers, and making the workflow from execution to clearing as robust and efficient as possible.[58] UBS stated that application of the rule to all activities under the Commission's jurisdiction pursuant to section 2(i) helps to ensure that the core principles and benefits of the rule ''remain relevant as the global swaps market continues to evolve.'' [59] UBS also urged the Commission to work with foreign regulators to maximize harmonization, avoid regulatory arbitrage, and establish substituted compliance regimes that address duplicative regulatory burdens, while also maintaining consistency with the principles of the Dodd-Frank Act and Commission regulations in the SEF area.[60]

IIB dealt primarily with cost-benefit issues that would arise from implementation of the test based on swap dealing activities physically located in the United States articulated in the DSIO Advisory.[61] IIB focused on swaps between a non-U.S. swap dealer and its non-U.S. counterparties that—under the test set forth in the Advisory—would be subject to transaction-level Dodd-Frank rules if the relevant swaps are arranged, negotiated, or executed by personnel or agents of the non-U.S. swap dealer located in the United States, but not otherwise. According to IIB, in such transactions, the costs of U.S. rules would be greater and benefits lower than in other transactions to which Dodd-Frank rules apply. IIB stated that, in order to avoid U.S. regulation, foreign swap dealers would forgo using staff located in the United States in transactions with foreign counterparties even in circumstances where employing U.S. personnel would be advantageous, for example because a trader located in the United States is more familiar with a particular market.[62] IIB also stated that such a test could result in covered transactions being subject to duplicative and possibly contradictory regulation by multiple jurisdictions and in costs to establish systems to keep track of which swaps are handled by personnel or agents located in the United States.[63] IIB further stated that benefits would be doubtful in transactions made subject to Commission rules by such a test because the resulting swaps would be between two foreign entities and thus, according to IIB, pose little threat to the U.S. financial system.[64] IIB also discussed cost-benefit implications of a test based on physical presence in the United States in the context of several particular Dodd-Frank rules, including, but not limited to, some of the rules subject to the *SIFMA* remand order.[65] IIB urged the Commission either to not implement such a test or to implement a version considerably narrower than the one described in the DSIO Advisory.[66] IIB also was critical of a different standard based on services provided within the United States by non-U.S. persons, set forth in a Division of Market Oversight guidance document. Under this standard, the SEF Registration Rule applies to foreign-based entities that provide swap execution services to traders located in the United States, even if the traders execute swaps for non-U.S. persons.[67]

In addition to discussing the application of Commission rules to non-U.S. firms based on activities within the United States, IIB stated that, in the area of swap data reporting, duplicative requirements create costs that could be avoided if the Commission could obtain information from foreign regulators and trade repositories.[68] IIB stated that it supported Commission efforts to address legal and other obstacles to cross-border information sharing.[69] Pending completion of these international efforts, IIB recommended that the Commission formalize existing no-action relief relating to the extraterritorial application of the SDR and Historical SDR Reporting Rules.[70] IIB made no recommendations for specific changes in the substantive requirements of the remanded rules.

---

[47] *Id.* at 4. ISDA–SIFMA called this a ''personnel-based test.'' *Id.*

[48] *Id.*

[49] JBA at 1.

[50] *Id.*

[51] *Id.* at 1–2.

[52] *Id.* at 2.

[53] *Id.*

[54] *Id.* at 2–3.

[55] *Id.* at 3.

[56] *Id.*

[57] The phrase ''swaps push-out rule'' is commonly used to refer to 15 U.S.C. 8305, which, broadly speaking and with certain exclusions, prohibits advances from a Federal Reserve credit facility or discount window to assist swap dealers and certain similar entities.

[58] UBS at 1.

[59] *Id.*

[60] *Id.*

[61] IIB called this a ''U.S. personnel test.'' IIB at 4.

[62] IIB at 5.

[63] *Id.* at 6–8.

[64] *Id.* at 6.

[65] *Id.* at 9–16. IIB's points regarding particular remanded rules are described in section IV.F, below.

[66] *Id.* at 17–19.

[67] *Id.* at 13–14.

[68] *Id.* at 20.

[69] *Id.*

[70] *Id.*

III. General Approach to Costs and Benefits of Extraterritorial Application of Remanded Rules and Methods for Addressing Cost-Benefit Issues Raised by Commenters

Under the *SIFMA* decision, the ultimate mandate to the Commission on remand, following consideration of the extraterritorial costs and benefits of the remanded rules, is to determine whether such consideration requires any changes to be made in the "substantive transaction- and entity-level requirements" of the remanded rules and, if not, to give a reasoned explanation why not.[71] The Commission observes, consistent with the court's analysis, that Congress's decision to apply the swaps rules extraterritorially may have implications for the costs and benefits of the substance of those rules. This possibility is inherent in cross-border regulation because different sovereigns will make different substantive choices in implementing swaps-market reforms, and will do so at different paces, which raises the prospect of regulatory arbitrage and/or overlapping or inconsistent rulemaking.

Although it is likely impossible to fully eliminate those difficulties, there are three general means by which the Commission and other regulators can reduce them. First, the regulator may promulgate rules and pursue policies specifically addressing the geographic reach of its regulations. For the Commission, any such cross-border rules and policies must be within the framework for the extraterritorial application of swaps rules set forth in section 2(i) and must take into account the policies of the relevant Dodd-Frank provisions as well as international harmonization and comity. Second, the regulator may alter the substance of its rules to conform them to those of foreign jurisdictions or to otherwise address the special issues inherent in cross-border regulation. Finally, the regulator may offer substituted compliance or similar relief in situations where a foreign regulation achieves results that are comparable to its own rules. At the Commission, similar relief may also come at the staff level in the form of no-action letters to address problems that may be more transient in nature, require faster action, or otherwise be better suited to staff action. These three categories of regulatory action may be used individually or in concert.

As to the first of these methods—rules or policies specifically addressing the geographical scope of regulations—the Commission in 2013 issued the Cross-Border Guidance to announce what it judged to be a desirable balance between Dodd-Frank's financial reform policies and international cooperation, consistent with the language of section 2(i). The Commission acknowledged, however, that swaps markets are dynamic and would continue to evolve, necessitating an adaptable approach.[72] In that vein, the Commission stated that it would consider addressing some of the subjects discussed in the Guidance by rulemaking in the future.[73] That remains the Commission's position. As markets evolve and the Commission receives more information, it will consider the possibility of adopting rules concerning the cross-border application of its swaps regulations.[74] Consideration of such rules is, however, outside the scope of the remand order.[75]

The second tool for addressing cross-border issues, tailoring substantive rule requirements, is the subject of this release, pursuant to the district court mandate. Although tailoring substantive rule requirements is a possible tool by which to avoid certain issues of regulatory arbitrage and inconsistent regulation, this approach has significant limitations. Chief among these is that the Commission does not have unlimited flexibility to alter rules or lower its standards, consistent with its statutory mandate. Even where the statute permits flexibility, relaxing a particular substantive requirement to address a cross-border issue may be undesirable from a public-policy standpoint when other relevant factors are also considered. This is particularly true since changes in the substance of rules affect domestic as well as extraterritorial transactions and entities.

A further concern with relaxation of substantive rule requirements as a tool to address issues of regulatory arbitrage and costs of regulation by multiple jurisdictions is that it could contribute to a "race to the bottom" dynamic if engaged in unilaterally rather than as an outcome of internationally coordinated rule harmonization efforts. This point is complicated by the fact, discussed in more detail below, that foreign jurisdictions do not yet have regulations in place, or fully in place, in important areas covered by the remanded rules. A final consideration in connection with the present remand is that, at the time of its original rulemakings, the Commission consulted with foreign regulators, reviewed comments concerning overseas application of rules, and took these sources of information into account in framing the substance of rules even where the accompanying cost-benefit discussion did not explicitly distinguish between domestic and extraterritorial rule applications.[76]

Notwithstanding these concerns, the Commission recognizes that incremental changes to harmonize its substantive rules with those of foreign jurisdictions, or otherwise to address issues specific to extraterritorial application, might be desirable under certain circumstances. However, perhaps because of the difficulties described in the previous paragraph, commenters made only a small number of recommendations for specific changes in the substantive requirements of the remanded rules. As explained in Part V, below, the available record does not justify adoption of these proposed changes in the context of the present remand, taking into account both considerations unique to the extraterritorial application of the relevant rules, and considerations common to their domestic and extraterritorial application. Commenters also urged the Commission to continue or expand its engagement in international harmonization efforts for certain rules. The Commission agrees, as discussed in more detail below. However, as also explained below, these efforts have not reached the point today where they can serve as the basis for specific rule changes.

At this time, the Commission is focused, in large part, on the third tool—cooperative international efforts including, but not limited to, substituted compliance and similar relief at the staff level. As outlined in the Cross-Border Guidance, the Commission's substituted compliance program is designed to avoid potential conflicts and duplication between U.S. regulations and foreign law, consistent with principles of international comity, but only in instances where the laws and regulations of the foreign jurisdiction are comparable and as comprehensive as a corresponding category of U.S. laws and regulations, thus avoiding the risk of a race to the bottom and ensuring that the Commission's public policy goals, established by Congress, are met.[77] As foreign regulators continue to make progress in implementing swaps-market reforms, incentives for regulatory arbitrage will diminish, and substituted compliance can be expanded to reduce duplicative or otherwise unnecessary regulatory burdens.[78]

---

[71] 67 F. Supp. 3d at 435.

[72] Cross-Border Guidance, 78 FR at 45297.

[73] *Id.* at 45297 n.39.

[74] For example, in conjunction with its rule on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016), the Commission has adopted an accompanying rule specifically addressing cross-border application. Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[75] *SIFMA* v. *CFTC,* 67 F. Supp. 3d at 435; *see also id.* at 434–35 (distinguishing between "substance" of rules and "scope" of their extraterritorial application under section 2(i)).

[76] For example, in the Portfolio Reconciliation Rule, the Commission, at the request of commenters, modified the proposed confirmation deadlines to take into account swaps executed in different time zones. 77 FR at 55923. *See also, e.g.,* Real-Time Reporting Rule, 77 FR at 1189–90; SDR Reporting Rule, 77 FR at 2137–38, 2151, 2160–62, 2165, 2167.

IV. Evaluation of International Cost-Benefit Considerations Raised in Comments

A. Commenters' General Observations on Costs of Extraterritorial Application of Rules

ISDA–SIFMA identifies a number of general respects in which compliance with Commission rules may be more difficult for foreign market participants than domestic ones:

> When foreign market participants are subject to Commission rules, they must engage with an unfamiliar, non-domestic regulator and face uncertainty regarding the ramifications of being subject to a new regime. A full-bore legal investigation (which may leave unresolved issues) and substantial management attention are prerequisites in any responsible entity becoming subject to a foreign regulator. The addition of specially trained staff is a common adjunct. Internal conflicts and customer resistance frequently may follow. It is unsurprising that non-U.S. market participants simply may be unwilling to take on this burden.[79]

ISDA–SIFMA thus suggests that foreign swaps entities may find it more costly to comply with Commission regulations than domestic entities because foreign entities will be less familiar with U.S. laws and institutions and will need to invest resources in learning about them. Along the same lines, the JBA comments that "banks are faced with increasing costs for legal fees and external consulting fees in their efforts to accurately interpret and comply with [Dodd-Frank rules]." [80] JBA also points out that banks have incurred costs to comply with multiple jurisdictions' regulations where the timing of implementation or requirements may differ, and that foreign swap dealers need to incur costs to comply with entity-level rules that apply to a firm's overall operations even though only a relatively small portion of the dealer's swaps may be with U.S. counterparties.[81]

With respect to these general points about costs of extraterritorial application of Commission rules, the Commission notes:

1. The commenters do not appear to dispute the basic point made in the Commission's Initial Response that "the swaps market functions internationally, with many transactions involving U.S. firms taking place across international boundaries; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located." [82] By the same token, ISDA–SIFMA's and JBA's general observations on costs are not inconsistent with the conclusion that the types of costs and benefits identified in the original preambles to the remanded rule characterize the extraterritorial, as well as the domestic, application of the rules. The Commission agrees, however, that entities doing business internationally likely would face additional costs resulting from the need to comply with swaps regulations in more than one jurisdiction. The more jurisdictions in which the market participant does business, the greater the costs that predictably will result. This is inherent in cross-border regulation, both as required of the Commission by Congress and by foreign regulators.

2. ISDA–SIFMA and JBA state that, in at least some instances, foreign firms will find it more costly to comply with CFTC Dodd-Frank rules than domestic firms will. However, for purposes of considering costs and benefits on remand, a number of factors significantly limit the weight that can be given to their general observations on costs.

a. With certain limited exceptions, discussed below,[83] ISDA–SIFMA and JBA provide no quantitative information on, or estimates of, the differential foreign and domestic cost effects they assert. Moreover, even in qualitative terms they provide little in the way of specific analysis or examples of how the cost mechanisms they mention work in practice.[84] This makes it difficult to evaluate how significant any differences in foreign and domestic costs are relative to the similarities resulting from the overall international nature of the swaps markets; and to assess the attendant implications with respect to the substance of the remanded rules.

b. The costs identified by ISDA–SIFMA and JBA are, to a considerable extent, not unique to the foreign applications of the remanded rules. Both comments emphasize the cost of learning about, and establishing compliance programs for, a novel regulatory scheme. However, the Dodd-Frank swaps regime, and the Commission's implementing rules, were novel for domestic as well as foreign firms since swaps in the United States were largely unregulated before Dodd-Frank. Moreover, firms located in the United States also must learn about foreign swaps regulations if they wish to do business overseas. The discussion by ISDA–SIFMA and JBA does not clearly distinguish the special costs of foreign firms complying with novel U.S. regulations from the costs to all firms of complying with any novel regulations. ISDA–SIFMA also does not adequately take into consideration that some costs of complying with U.S. rules may have been higher simply because the United States moved more quickly than foreign jurisdictions to implement derivatives regulations in response to the financial crisis; and foreign jurisdictions still do not have regulations fully in place.

c. The discussion of general costs in ISDA–SIFMA and JBA, to a large extent, does not distinguish between costs attributable to the remanded rules and costs attributable to the underlying statute. As noted, one of the major cost drivers described in these comments is the cost of learning about, and establishing compliance programs for, U.S. law. However, in virtually all areas covered by the remanded rules, the Dodd-Frank statute either specifically required the CFTC to promulgate some form of rule or directly imposed regulatory requirements.[85] And, as held

---

[77] 78 FR at 45340.

[78] *See* below at section IV.C.

[79] ISDA–SIFMA at 2.

[80] JBA at 1.

[81] *Id.* at 1–2.

[82] 80 FR at 12558. Similarly, while the comments set forth various ways in which, according to the commenters, foreign and domestic costs may differ, they do not take issue with the Commission's statement in the Initial Response that, in the original **Federal Register** releases for the rules at issue, "where the Commission did not specifically refer to matters of location, its discussion of costs and benefits referred to the effects of its rules on all business activity subject to its regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under section 2(i)." *Id.*

[83] *See* section IV.E below.

[84] IIB provides somewhat more detail in its discussion of issues raised by the DSIO Advisory. *See* section IV.F. below.

[85] For example, reporting of swaps to swap data repositories is required by CEA section 2(a)(13)(G), 7 U.S.C. 2(a)(13)(G); the Swap Entity Registration Rule is required by CEA sections 4s(a) and 4s(b), 7 U.S.C. 6s(a) and 6s(b); the Daily Trading Records Rule is required by CEA section 4s(g), 7 U.S.C. 6s(g); the Real-Time Reporting Rule is required by CEA section 2(a)(13)(C), 7 U.S.C. 2(a)(13)(C); and

Continued

by the court in *SIFMA,* the rules were made applicable to foreign activity by CEA section 2(i), not the Commission's rulemaking. As a result, at least part of the cost of figuring out and applying U.S. law discussed in these comments is attributable to the statutory scheme and not to the specific terms of the rules promulgated by the Commission.

d. The regulatory requirements imposed by the remanded rules fall largely on sophisticated financial firms active in international markets. It is unlikely that such firms would have significantly more difficulty than similar U.S. firms in applying U.S. law.

Foreign firms made subject to the rules by section 2(i) are likely to have significant experience in international markets, including in particular the U.S. market, since that provision only applies to firms whose transactions have a significant connection with or effect on U.S. commerce. Among such firms, the Swap Entity Registration,[86] Daily Trading Records, Risk Management, Chief Compliance Officer,[87] Swap Entity Definition,[88] and Portfolio Reconciliation [89] Rules primarily impose requirements on swap dealers. A foreign business that meets the legal criteria to be classified as a swap dealer is likely to be a major international financial firm, for a number of reasons. Broadly speaking, the statutory swap dealer definition encompasses firms that are in the business of making available swaps to other persons, to meet the business needs of those persons, as opposed to firms that merely use swaps to hedge their own business risks or for their own investment purposes.[90] Firms engaged in this line of business are likely to be sophisticated financial entities. Indeed, the Commission's rule further defining a swap dealer includes a "de minimis" exception under which an entity dealing in swaps is not considered to be a swap dealer unless its volume of dealing activity exceeds a specified notional dollar amount, currently $8 billion, with certain limited exceptions.[91]

Pursuant to section 2(i), a foreign firm that otherwise meets the definition of a swap dealer would not be considered a swap dealer for purposes of Dodd-Frank swaps regulations unless its dealing activity has a direct and significant connection with activities in or effect on U.S. commerce. The Cross-Border Guidance describes current Commission policy for applying this limitation. Generally speaking, a non-U.S. firm engaged in swap dealing is only treated as a swap dealer if it is a guaranteed or conduit affiliate of a U.S. firm, or if its dealing activity with a connection to or effect on U.S. markets—including trades with U.S. persons and trades with non-U.S. firms that are guaranteed or conduit affiliates of U.S. persons—exceeds the de minimis amount, which, as noted, is currently $8 billion.[92] Non-U.S. firms that meet these criteria are likely not only to be sophisticated financial firms, but also to have a significant presence in international markets and at least some familiarity with U.S. law, including Dodd-Frank and the CEA, and capacity for implementing compliance programs based on it. While the Guidance is non-binding, the scope of section 2(i) itself means that foreign entities subject to the swap dealer definition will generally be sophisticated international companies.

Consistent with this conclusion, of the firms currently registered as swap dealers with the Commission, almost all that are not U.S. companies are either foreign affiliates of U.S. companies, international banking companies, or affiliates of other major international companies.[93] Similarly, in the preamble to the Swap Entity Registration Rule, the Commission noted that many of the foreign-based commenters on the rule had experience navigating U.S. law in connection with lines of business such as banking or insurance, although it acknowledged that there might potentially be higher costs for any swap dealers that may lack familiarity with U.S. law.[94]

The remanded reporting rules—the Real-Time Reporting, SDR Reporting, and Historical SDR Reporting Rules—also impose duties largely on sophisticated parties. For transactions executed on or subject to the rules of designated contract markets [95] ("DCMs") or SEFs, reporting duties generally fall on the relevant DCM or SEF. In other swap transactions, the reporting duty generally falls on a swap dealer, assuming at least one of the parties is a dealer.[96] For cleared swaps, certain reporting duties are handled by derivatives clearing organizations, another category of sophisticated entity.[97] The Commission's understanding is that transactions that are not traded on or pursuant to the rules of a DCM or SEF and that do not involve a dealer, account for only a relatively small portion of the market.

3. The Commission and its staff have taken a variety of actions that mitigate, though they do not eliminate, differential costs of compliance for foreign and domestic swaps business, most importantly, though not only, through the program of substituted compliance. These mitigation actions are described in section IV.C, below.

B. General Observations by Commenters on Benefits of Extraterritorial Application of Remanded Rules

ISDA–SIFMA stated that net benefits of the extraterritorial application of Commission rules are likely to be reduced where foreign regulations accomplish similar results; they refer to "attenuated or minimal benefits" from "overlayering Commission regulations onto foreign regulations that meet the objectives outlined by the G–20 jurisdictions." [98] Other commenters also refer to the existence of overlapping regulations in some areas such as reporting.[99] The Commission agrees that the existence of similar foreign regulations can potentially reduce the incremental benefits of Commission rules for entities or transactions covered by those regulations. However, there are a number of factors that limit the weight that can be given to commenters' observations on this point in the context of the present remand.

1. ISDA–SIFMA and other commenters give little or no information as to what foreign regulations are currently in effect that they believe address the subject areas of the remanded Commission rules, in particular foreign regulations that are not at this time subject to substituted

---

requirements for risk management and chief compliance officers are imposed by CEA sections 4s(j)(2) and 4s(k), 7 U.S.C. 6s(j)(2) and 6s(k).

[86] 77 FR 2613.

[87] 77 FR 20128.

[88] 77 FR 30596.

[89] 77 FR 55904.

[90] *See, e.g.,* the interpretive guidance on the definition of swap dealer in the preamble to the Swap Entity Definition Rule, 77 FR at 30607–16.

[91] 17 CFR 1.3(ggg)(4). Under the terms of the regulation, the amount will change to $3 billion at the end of 2017 unless the Commission takes action to the contrary. The Commission is currently evaluating what the de minimis amount should be after this date. *See, e.g.,* Swap Dealer *De Minimis* Exception Preliminary Report, A Report by Staff of the U.S. Commodity Futures Trading Commission Pursuant to Regulation 1.3(ggg) (Nov. 18, 2015).

[92] Cross-Border Guidance, 78 FR at 45318–20. An exception is non-U.S. firms that are themselves guaranteed or conduit affiliates of U.S. firms. For these firms, all of their swap dealing activity counts toward the de minimis threshold. *Id.* at 45318–19.

[93] *See* Dodd-Frank Act, Provisionally Registered Swap Dealers, CFTC.gov, *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.*

[94] 77 FR at 2625.

[95] Broadly speaking, "designated contract market" is the term used in the CEA for a traditional futures exchange or a similar exchange used for swap trading.

[96] 17 CFR 43.3(a)(3)(i)–(iii).

[97] *See, e.g.,* 17 CFR 45.4(b); Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps, 80 FR 52544 (Aug. 31, 2015).

[98] ISDA–SIFMA at 2.

[99] JBA at 2–3, IIB at 19–20.

compliance. Several of the remanded rules cover subjects where non-U.S. regulation is not yet final. One example is the SEF Registration Rule. In the European Union ("EU"), the leading swaps market outside the United States, new regulations for "multilateral trading facilities" and "organized trading facilities"—EU terms for certain types of facilities that execute swaps—are being put in place pursuant to EU Directive 2014/65, markets in financial instruments directive, commonly known as "MiFID II," and Regulation No. 600/2014, markets in financial instruments regulation, commonly known as "MiFIR," both of which were adopted in 2014.[100] However, the EU still needs to approve draft Regulatory Technical Standards put forth by the European Securities and Markets Authority implementing MiFID II and MiFIR.[101] For some requirements, individual European states and competent authorities will need to take action to put requirements in force.[102] As a result, these EU requirements are not currently expected to go into effect until January 3, 2018.[103] Other foreign jurisdictions also generally do not have current regulations in operation for swaps trading facilities analogous to SEFs.[104]

Another example is the Real-Time Reporting Rule. European regulations that will require the post-trade publication of swap transaction information are being implemented within the MiFID II/MiFIR framework and therefore are not yet operational.[105] At present, with very limited exceptions, other non-U.S. jurisdictions also do not yet provide for public reporting of swap transaction information similar to that provided by the Real-Time Reporting Rule.[106]

The Commission will also need to monitor the effect of the recent vote by the United Kingdom to leave the European Union on the timing and other aspects of the implementation of foreign regulation in the areas of the remanded rules, particularly given the importance of London as a financial center.

2. Even where foreign jurisdictions have in place regulations broadly similar to U.S. regulations, there can be important benefits to having U.S. rules apply to foreign swaps activity that has a significant connection with or effect on U.S. markets. Among the remanded rules, one example is the Swap Entity Registration Rule, which sets forth the paperwork and related requirements for a swap dealer to register with the Commission.[107] As explained in the cost-benefit discussion in the rule preamble, the major benefit of this rule is that it "will enable the Commission to increase market integrity and protect market participants and the public by identifying the universe of [swap dealers] and [major swap participants] subject to heightened regulatory requirements and oversight in connection with their swaps activities." [108] In other words, the rule provides the Commission with basic identifying and other information to enable it to monitor the activities of swap dealers and major swap participants—whether foreign or domestic—with a significant connection with or effect on the U.S. market, thereby facilitating regulatory actions that may be required. Foreign licensure requirements do not provide the same benefit of directly and systematically providing the Commission information to enable it to identify and monitor foreign participants in U.S. markets.

Other important examples are the SDR and Historical SDR Reporting Rules. Among the primary benefits of these rules is to provide the Commission and other U.S. regulators with information on swaps trades to enable them to monitor and analyze the market.[109] This benefit is relevant to swaps outside the United States made subject to reporting by section 2(i), since such swaps are likely to have significant effects on or connections to the U.S. financial system. While the EU and some other major swaps jurisdictions have rules in place requiring reporting of swaps transactions to "trade repositories," U.S. regulators currently do not have ready access to this data for a variety of legal and practical reasons.[110] While efforts are underway to address these issues, at present reporting to foreign trade repositories does not provide the same benefits for U.S. markets as the Commission's SDR and Historical SDR Reporting Rules.[111]

3. In circumstances where foreign and U.S. regulations address similar concerns, there may be economies in compliance activity that partially compensate for the effects of regulatory overlap. For example, investments by a firm in information and compliance systems to comply with foreign legal requirements in areas such as reporting and risk management are likely to be useful for—and thus reduce the incremental cost of—complying with similar U.S. requirements even if the rules differ in detail.

4. Through substituted compliance and other actions, the Commission has allowed businesses to rely on foreign law in circumstances where it can be shown that that law achieves benefits similar to the Commission's requirements. The Commission expects to make additional use of substituted compliance or other forms of recognition of similar foreign regulation as appropriate in the future, including when other foreign rules take effect. Substituted compliance and related actions are discussed in detail in section IV.C, below.

C. Substituted Compliance and Other Commission Actions To Mitigate Costs of Application of Remanded Rules Outside the United States

The Commission has taken a variety of actions to modify the overseas application of the remanded rules in circumstances where other jurisdictions have similar regulations in place. These actions may not eliminate the costs associated with duplicative regulation, but they substantially mitigate them, and therefore reduce any justification for substantive rule changes to address extraterritorial concerns.

The most important of the Commission's actions to address problems of duplicative regulation is substituted compliance. A framework for substituted compliance was set forth in the Commission's Cross-Border

---

[100] *See, e.g.,* Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, 2014 O.J. (L 173) 349; Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending regulation (EU) No. 648/2012, 2014 O.J. (L 173) 84.

[101] Council of the EU Press Release 255/16, Markets in financial instruments: Council confirms agreement on one-year delay (May 18, 2016).

[102] *Id.*

[103] *Id.*

[104] *See* Financial Stability Board, OTC Derivatives Market Reforms, Tenth Progress Report on Implementation, at 12–13, 17 Table F (Nov. 4, 2015), *http://www.fsb.org/wp-content/uploads/OTC-Derivatives-10th-Progress-Report.pdf.*

[105] *See* International Organization of Securities Commissions ("IOSCO"), Post-Trade Transparency in the Credit Default Swaps Market, Final Report, at 6 (Aug. 2015), *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD499.pdf.*

[106] *See id.* Financial Stability Board, Thematic Review on OTC Derivatives Trade Reporting, Peer Review Report, at 51 Table 12 (Nov. 4, 2015) ("FSB Trade Reporting Review"), *http://www.fsb.org/wp-content/uploads/Peer-review-on-trade-reporting.pdf.*

[107] 77 FR at 2614. The underlying requirement to register derives from the statute. *See* CEA section 4s(a), 7 U.S.C. 6s(a).

[108] Swap Entity Registration Rule, 77 FR at 2623.

[109] *See, e.g.,* discussion of benefits of SDR Reporting Rule in rule preamble, 77 FR at 2176, 2179, 2181.

[110] *See* FSB Trade Reporting Review at 27–28.

[111] *See id.* at 29–30 (recommendation that all jurisdictions should have a legal framework in place to permit access to data in trade repositories by foreign regulatory authorities by June 2018).

Guidance.[112] Notably, since the Guidance is a non-binding policy statement, the Commission is not precluded from employing substituted compliance in circumstances, or on terms, not specified in the Guidance if there are good reasons for doing so.[113]

Substituted compliance is relevant to entities that are subject to the Commission's rules pursuant to section 2(i), but also are subject to the swaps laws of a foreign jurisdiction. Examples given in the Guidance include non-U.S. firms required under section 2(i) to register with the Commission as swap dealers and foreign branches and foreign-located guaranteed and conduit affiliates of U.S. swap dealers.[114] Substituted compliance means that the Commission will permit the entity to comply with the law of the relevant foreign jurisdiction in lieu of compliance with one or more of the Commission's regulatory requirements.[115] As a condition for substituted compliance, the Commission must find that the foreign jurisdiction's requirements, in a particular subject area, are comparable to and as comprehensive as, the Commission's requirements.[116] The foreign jurisdiction's requirements need not be identical, however, so long as they achieve similar outcomes.[117] Under the program described in the Guidance, the availability of substituted compliance may vary depending on the type of regulations or transactions at issue. For example, for certain regulations, called ''transaction-level requirements'' in the Guidance, substituted compliance is available to foreign swap dealers that are affiliates of U.S. firms in transactions with foreign counterparties, but not in transactions with counterparties who are U.S. persons, in light of the greater U.S. interest in the latter.[118]

Procedurally, persons interested in substituted compliance must apply to the Commission for a comparability determination. Applicants must identify the Commission requirements for which they seek substituted compliance and provide information about the foreign law that they believe is comparable.[119] Applicants can include regulated firms, foreign regulators, and trade associations or similar groups.[120] However, a resulting comparability determination will apply to all entities or transactions in the relevant jurisdiction, not just to particular applicants.[121] In addition to the formal application, comparability determinations typically also involve consultation by the Commission with foreign regulators and may involve follow-up memoranda of understanding providing for information sharing and other forms of cooperation between regulators.[122] These elements of the process allow the Commission to reduce burdens without sacrificing its regulatory interests as defined by the CEA and Dodd-Frank.

In December 2013, the Commission announced comparability determinations—making substitute compliance possible—with respect to six foreign jurisdictions: Australia, Canada, the European Union, Hong Kong, Japan, and Switzerland in certain rulemaking areas. All of these jurisdictions were found to have laws comparable to two of the remanded rules, the Chief Compliance Officer and Risk Management Rules.[123] The EU and Japan were found to have laws comparable to the Daily Trading Records Rule.[124] The EU was also found to have laws comparable to most, and Japan to have laws comparable to some, provisions of the Portfolio Reconciliation Rule.[125] The comparability determinations incorporated a number of exceptions, typically to ensure that the Commission or other U.S. authorities obtain information on foreign registrants.[126]

Nothing in the Commission's policies for substituted compliance precludes additional comparability determinations, beyond those made in 2013, as the international legal landscape for swaps evolves. The Commission recently made a comparability determination for certain European rules for central counterparties, the EU equivalent of what U.S. law calls derivatives clearing organizations.[127] While this is a subject area outside the *SIFMA* litigation, the Commission remains open to further substituted compliance for the remanded rules, upon an adequate showing of comparability.

Comparability determinations have been supplemented by other actions to mitigate costs of the extraterritorial application of the remanded rules and accommodate foreign regulation. For example, in the Cross-Border Guidance, the Commission set forth a policy that, with certain exceptions, foreign swap dealers generally would not be required to comply with transaction-level requirements in connection with their swaps with foreign counterparties independently of the substituted compliance program.[128] Another major example is the use of staff no-action letters. These have been used particularly in areas where the law is unsettled, either because of the continuing evolution of foreign law, efforts to harmonize regulation across jurisdictions, or, in some instances, possible changes in the Commission's own rules. Staff no-action relief has typically been for limited periods of time, with extensions granted as appropriate.

One example is no-action relief in the area of the SDR and Historical SDR Reporting Rules. With certain exceptions, the Commission's Division of Market Oversight has granted no-action relief with respect to these rules for swap dealers and major swap participants established under the laws of Australia, Canada, the European

---

[112] 78 FR at 45342ff.

[113] For example, in the recently promulgated rule on the cross-border application of the Commission's rule on margin requirements for uncleared swaps, the Commission established standards as to when substituted compliance would be available with respect to that rule that are somewhat different from the standards set forth in the Cross-Border Guidance. *See* 81 FR at 34829–30.

[114] 78 FR at 45342.

[115] *Id.*

[116] *Id.*

[117] *Id.* at 45342–43.

[118] *Id.* at 45350–61.

[119] *Id.* at 45344.

[120] *Id.*

[121] *Id.*

[122] *Id.*

[123] 17 CFR 3.3, 23.600–23.606; *see* Comparability Determination for Australia: Certain Entity-Level Requirements, 78 FR 78864, 78868–75 (Dec. 27, 2013); Comparability Determination for Canada: Certain Entity-Level Requirements, 78 FR 78839, 78842–49 (Dec. 27, 2013); Comparability Determination for the European Union: Certain Entity-Level Requirements, 78 FR 78923, 78927–35 (Dec. 27, 2013); Comparability Determination for Hong Kong: Certain Entity-Level Requirements, 78 FR 78852, 78855–62 (Dec. 27, 2013); Comparability Determination for Japan: Certain Entity-Level Requirements, 78 FR 78910, 78914–21 (Dec. 27, 2013); Comparability Determination for Switzerland: Certain Entity-Level Requirements, 78 FR 78899, 78902–08 (Dec. 27, 2013).

[124] 17 CFR 23.202; *see* Comparability Determination for the European Union: Certain Entity-Level Requirements, 78 FR 78878, 78887–88 (Dec. 27, 2013); Comparability Determination for Japan: Certain Transaction-Level Requirements, 78 FR 78890, 78896–97 (Dec. 27, 2013).

[125] 17 CFR 23.501–23.506; *see* 78 FR at 78883–87; 78 FR at 78894–95.

[126] For example the comparability determinations for the Risk Management and Chief Compliance Officer Rules required covered entities to make reports to the Commission, although these reports could be the same as the equivalent reports provided to the relevant foreign regulators.

[127] Comparability Determination for the European Union: Dually Registered Derivatives Clearing Organizations and Central Counterparties, 81 FR 15260 (Mar. 22, 2016).

[128] 78 FR at 45369. In connection with the cross-border application of the margin rule for uncleared swaps, which postdates the present litigation, the Commission has established certain exclusions by rule. *See* 81 FR at 34850–51 (Table A).

Union, Japan, or Switzerland.[129] This relief was issued after the Commission received requests for comparability determinations for trade repository reporting rules in these jurisdictions.[130] The primary exceptions to the relief are for entities that are part of an affiliated group with a U.S. parent and for transactions with counterparties who are U.S. persons or guaranteed or conduit affiliates of U.S. persons.[131] These exceptions reflect the stronger U.S. supervisory and oversight interest in such entities and transactions.[132]

For certain other jurisdictions, the Division of Market Oversight, in response to an ISDA request, has granted no-action relief in connection with requirements in the SDR and Historical SDR Reporting Rules to report identifying information regarding swap counterparties in certain circumstances where doing so would conflict with foreign privacy laws or other legal requirements.[133] The most recent no-action letter on this subject extends relief through March 1, 2017.[134]

In connection with the SEF Registration Rule, in 2014 the Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight issued a letter stating that no-action relief from that rule would be available to multilateral trading facilities in EU member states upon certification that they were subject to regulatory requirements of their home governments similar to those of the SEF Registration Rule in specified ways.[135] The letter also stated that certain no-action relief would be available to persons trading on these facilities to reflect the fact that the facilities would be carrying out functions like those of U.S. SEFs.[136] This includes partial relief from two of the remanded rules, SDR Reporting and Real-Time Reporting, since the EU trading facility, like a SEF, would be reporting the swap data in question.[137] To date, no European trading facilities have submitted the required certification to obtain this no-action relief.

The Division of Market Oversight and the Division of Swap Dealer and Intermediary Oversight have also issued a letter announcing the availability of similar no-action relief for certain Australian licensed financial markets.[138] An Australian trading facility has advised the Division of Market Oversight that it intends to make the certification required by the enabling letter.[139] In the interim, the Division has issued a series of no-action letters granting the facility time-limited no-action relief from the SEF Registration Rule, subject to certain conditions.[140] This relief currently extends until September 15, 2016.[141]

Further, in response to industry requests, the Commission staff has issued no-action relief to address a variety of issues related to the implementation of some of the remanded rules that do not specifically involve cross-border issues, but that may provide relief to foreign as well as domestic businesses subject to the rules.[142] In addition, the Commission is codifying some existing no-action relief via rulemaking.[143]

D. Commission Consideration of Substantive Rule Changes Outside the Context of the Remand Order

Another factor weighing against adopting substantive rule changes in the immediate context of the *SIFMA* remand is that the Commission currently is involved in a number of ongoing international efforts that may in the future result in the Commission considering substantive rule changes and may thereby lead to further mitigation of costs of extraterritorial application of the remanded rules. These include discussions with foreign regulators at a variety of levels of formality. For example, in the SEF area, the Commission has worked with European counterparts to understand similarities and differences in our rules.

In the area of swap data reporting, the Commission staff is actively involved in international efforts to develop guidance regarding data elements used for reporting in different jurisdictions.[144] While the primary purpose of this effort is to make reported information more valuable to regulators, better standardization of data elements may also reduce compliance costs for entities operating under the laws of multiple jurisdictions and help facilitate the use of substituted compliance for reporting requirements in the future. In another example of ongoing developments involving swaps data reporting, in December 2015 Congress amended the Dodd-Frank provision regarding swaps data repositories to remove an indemnification requirement that has proven to be an obstacle to the sharing of data internationally.[145] The Commission staff is considering recommendations to the Commission for amendments to Commission rules to address this statutory change. As with data standards, improved sharing of information among regulators potentially could support the future use of substituted compliance in the swap data reporting area.

The Commission believes that harmonization through substantive rule changes is best considered first in consultation with foreign counterparts, rather than unilaterally and reactively. Indeed, section 752 of Dodd-Frank directs the Commission to "consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps." [146] This ensures that rule changes are more likely to result in harmonized regulation rather than a race to the bottom or rules that do not function efficiently in combination. Where such progress has not yet produced agreement or relief, it does not affect the present costs and benefits of the extraterritorial application of the remanded rules. But the existence of these efforts is a factor weighing against making immediate changes in the rules in the context of the *SIFMA* v. *CFTC* remand.

---

[129] CFTC Letter No. 15–61 (extending no-action relief provided in CFTC Letter No. 13–75 and extended under CFTC Letter No. 14–141).

[130] *See id.* at 2; CFTC Letter No. 13–75 at 1–2. In response to a request from ISDA, this relief was extended in late 2015 until the earlier of (a) 30 days after the issuance of a relevant comparability determination or (b) December 1, 2016. CFTC Letter No. 15–61 at 2.

[131] CFTC Letter No. 15–61 at 2. There are also exceptions for certain recordkeeping requirements. *Id.*

[132] *See* CFTC Letter No. 13–75 at 2.

[133] *See, e.g.,* CFTC Letter Nos. 16–03, 13–41; *see also* IIB at 20 (supporting Commission's efforts to dispel conflicts with foreign privacy laws through no-action relief, data standardization, and memoranda of understanding).

[134] CFTC Letter No. 16–03 at 4–5.

[135] *See* CFTC Letter No. 14–46. This letter superseded an earlier no-action letter on the same subject, CFTC Letter No. 14–16.

[136] CFTC Letter No. 14–46.

[137] *Id.*

[138] CFTC Letter No. 14–117, updated by CFTC Letter No. 15–29.

[139] *See* CFTC Letter No. 16–52.

[140] *Id.*

[141] *Id.*

[142] *See, e.g.,* CFTC Letter Nos. 15–60, 15–38.

[143] The Commission has recently done this for registration requirements involving foreign nationals. Alternative to Fingerprinting Requirement for Foreign Natural Persons, 81 FR 18743 (Apr. 1, 2016). *See also,* Definitions of "Portfolio Reconciliation" and "Material Terms" for Purposes of Swap Portfolio Reconciliation, 81 FR 27309 (May 6, 2016).

[144] *See, e.g.,* Committee on Payments and Market Infrastructures and Board of the International Organization of Securities Commissions, Consultative report, Harmonisation of key OTC derivatives data elements (other than UTI and UPI)—first batch (Sept. 2015). The Commission co-chairs an international working group in this area. *Id.* at Annex 2.

[145] *See, e.g.,* FAST Act Includes Dodd-Frank Swap Fix on Global Transparency, Practical Law (Dec. 15, 2015), *http://us.practicallaw.com/w-001-0649?q=&qp=&qo=&qe=.*

[146] Public Law 111–203, 124 Stat. 1376 (2010).

E. Market Fragmentation and Related Issues

ISDA–SIFMA and JBA state that, in addition to imposing direct costs on foreign businesses, the extraterritorial application of the remanded rules may induce such businesses to reduce their participation in the U.S. market to avoid U.S. regulation. For example, ISDA–SIFMA observes:

> These costs and uncertainties [of foreign entities' compliance with U.S. rules] function as barriers to entry and to continued engagement in U.S. markets, potentially resulting in market fragmentation and *decreased liquidity available to U.S. persons* as foreign market participants change their business practices so as not to subject themselves to Commission regulation.[147]

This is an important issue worthy of the Commission's sustained attention. The possibility that compliance costs may induce some businesses—whether domestic or foreign—to reduce their swaps activities was recognized at the time of the original rulemakings and was discussed in the cost-benefit section of the preamble to the Swap Entity Definition Rule, albeit without specifically distinguishing between domestic and cross-border activity.[148] It is plausible that foreign firms are more likely to reduce their swaps activities in U.S. markets in response to U.S. regulation since U.S. markets may be less important to foreign firms, at least for some firms and some categories of swaps. However, it is difficult to evaluate the magnitude of any such effects since, with the important but limited exception of ISDA data on the SEF Registration Rule discussed immediately below, commenters generally did not provide quantitative information on the subject.

Nevertheless, it is reasonable to believe that if an individual firm judges that costs of complying with U.S. rules exceed the costs of reducing its participation in or withdrawing from U.S. markets, it may choose to avoid U.S. markets, at least temporarily. Accordingly, it is important to consider, as ISDA–SIFMA has raised, whether and to what extent rule-induced avoidance of U.S. markets will have a significant effect on the liquidity and the overall operation of those markets. ISDA–SIFMA discusses two ISDA research notes which provide relevant quantitative information on this issue for one of the remanded rules, the SEF Registration Rule.[149]

The research notes studied transactions between U.S. and European swap dealers before and after the compliance date of the rule in October 2013. They studied transactions involving two categories of cleared swaps, euro-denominated interest rate swaps (''euro IRS'') and U.S. dollar-denominated interest rate swaps (''dollar IRS'').[150] For euro IRS, the notes found that, before the compliance date of the SEF Registration Rule, the average volume of transactions between European and U.S. dealers was approximately 29% of the total volume of euro IRS. This figure fell to 9% in October 2013 and 6% in May 2014.[151]

The ISDA figures on euro IRS volume provide evidence of a reduction in European involvement in the U.S. interdealer market following the compliance date of the SEF Registration Rule, but do not measure liquidity or market quality. The ISDA evidence raises concerns about market fragmentation and justifies further inquiry, including inquiry into possible effects of market fragmentation on liquidity. However, the ISDA data does not require immediate changes in the SEF Registration Rule in the context of the *SIFMA* v. *CFTC* remand, for a number of reasons.

1. There is a significant possibility that the ISDA data reflect a temporary transition period rather than the permanent effects of the SEF Registration Rule. As discussed above, the European Union, in MiFID II and MiFIR, has determined to put in place a regulatory framework for swap trading facilities that aims at many of the same objectives as the Dodd-Frank regime for SEFs.[152] As also discussed above, these regulations are planned to take effect in 2018. As a result, to the extent that the reduced participation in the U.S. market reported by ISDA is driven by differences in U.S. and European regulation of trading facilities, those differences can be expected to narrow in the next few years. For the same reason, the results reported by ISDA may not reflect European dealers' response to the specific substantive requirements of the SEF Registration Rule but, rather, a preference to trade in a market where more robust regulation of trading platforms has yet been put into effect. It is also possible that, as the European Union regime is implemented, the Commission may consider substituted compliance or similar actions that might affect choice of counterparties by European dealers.[153]

2. It is not clear how far the results reported by ISDA for euro IRS generalize. According to the more recent of the research notes cited by ISDA–SIFMA, in the interdealer market for dollar IRS, the portion of the market involving transactions between European and U.S. swap dealers declined to some extent for several months after the SEF Registration Rule took effect, but then returned to more-or-less pre-rule levels.[154] The note suggests that the difference between the results for euro IRS and dollar IRS ''may be because the market for US IRS is US-centric, whereas the market for euro IRS has a more global character and is thus more prone to fragmentation.''[155] The market for euro IRS is large enough that even results confined to this market are still important for Commission policymaking, but the differences in the results reported by ISDA for different IRS markets affected by the same SEF Registration Rule are a reason for caution in drawing conclusions with respect to the specifics of the rule.[156]

---

[147] ISDA–SIFMA at 2. *See also* JBA at 2. IIB also discusses market withdrawal issues, but primarily in the context of application of the DSIO Advisory and Division of Market Oversight guidance document relating to legal standards for the application of Commission rules based on the provision of swap-related services by non-U.S. persons within the United States. IIB's concerns in this area are discussed below in section IV.F.

[148] *See* 77 FR at 30703 & n.1272, 30705.

[149] ISDA–SIFMA at 3 & n.6 (citing ISDA Research Note, Cross-Border Fragmentation of Global OTC Derivatives: An Empirical Analysis (Jan. 2014), *https://www2.isda.org/attachment/NjIzNw==/Cross%20Border%20Fragmentation%20-%20An%20Empirical%20Analysis.pdf;* and ISDA Research Note, Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-Year 2014 Update (July 2014), *https://www2.isda.org/attachment/NjY0NQ==/Fragmentation%20study%20FINAL.pdf*).

[150] ISDA Research Note, Cross-Border Fragmentation of Global OTC Derivatives: An Empirical Analysis (Jan. 2014), and ISDA Research Note, Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-Year 2014 Update (July 2014).

[151] ISDA–SIFMA at 3.

[152] *See, e.g.*, MiFIR, *supra* note 100, at 2–3 (recital 8).

[153] *See, e.g.*, CEA section 5h(g), 7 U.S.C. 7b–3(g) (authorizing conditional or unconditional exemptions from SEF registration for SEFs subject to comparable, comprehensive supervision and regulation by governmental authorities in the home country of the facility). For comparison, in the area of clearing, the Commission has granted conditional exemptions from U.S. registration to a number of foreign-regulated derivatives clearing organizations under the authority of CEA section 5b(h), 7 U.S.C. 7a–1(h). *See, e.g.*, Order of Exemption from Registration, *In the Matter of the Petition of Japan Securities Clearing Corporation for Exemption from Registration as a Derivatives Clearing Organization* (CFTC Oct. 26, 2015), available on the Commission's Web site at *http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/jsccdcoexemptorder10-26-15.pdf*.

[154] ISDA Research Note, Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-Year 2014 Update at 8.

[155] *Id.*

[156] It may also be noted that, in the euro IRS market, U.S. swap dealers continued to do most of their trading with European swap dealers after the implementation of the SEF Registration Rule, notwithstanding the apparent shift away from the U.S. market by the European firms. According to the more recent of the research notes, U.S. swap

3. To the extent that the results reported by ISDA are attributable to regulation, they may be partly attributable to regulatory requirements that are not subject to the *SIFMA* remand, including statutory requirements. As the more recent of the ISDA research notes points out, initial "made available to trade" determinations occurred in early 2014, triggering a requirement under U.S. law that the types of swaps studied by ISDA be traded on SEFs or DCMs. According to the research note, this could have contributed to the European swap dealer behavior reported by ISDA.[157] However, the requirement that certain swaps be traded on either SEFs or DCMs is not imposed by the remanded SEF Registration Rule. It arises primarily from the combined effect of the mandatory clearing requirement under CEA section 2(h)(1);[158] the Commission's Clearing Determination Rule,[159] which was part of the *SIFMA* lawsuit, but was not remanded; and the statutory requirement that swap transactions subject to mandatory clearing be traded on a SEF or DCM if a SEF or DCM makes the swap available to trade.[160] This adds a further complication in drawing conclusions from the ISDA data for purposes of the remand order.

4. The criteria for identifying dealers as European and U.S. in the ISDA research notes is not completely clear, but appear to be based, at least in part, on country of incorporation.[161] However, some swap dealers incorporated in Europe are subsidiaries or affiliates of U.S. companies while some swap dealers incorporated in the United States are subsidiaries or affiliates of European companies.[162] As a result, it is likely that some of the swaps business that shifted away from U.S. dealers as reported in the ISDA notes moved to swap dealers incorporated in Europe that have corporate relationships with U.S. swap dealers. The economic effect of such a shift may depend on the nature of the business relationship between the affiliated dealers—for example whether their swaps activities are managed in a unified manner or how risks and obligations are transferred among the affiliates. These issues are not explored in the research notes.

5. Even apart from scheduled changes in European law, enhanced regulation of multilateral swap trading platforms, such as SEFs, is still relatively new and the industry is likely to continue to evolve.[163] There is also ongoing research into the effects of SEF regulation, including the market fragmentation issue raised by ISDA–SIFMA.[164] As a result, a better understanding of the issue and its implications is likely to be available in the reasonably near future compared with the present record.

6. The evidence of market fragmentation cited by ISDA–SIFMA needs to be considered against the background of the expected benefits to the functioning of the swap market provided by the requirements of the SEF Registration Rule. These benefits were discussed in detail in the preamble to the rule.[165] They include, among others, increased pre-trade transparency (availability of information about prices and quantities at which traders are prepared to transact), potentially making the market more efficient by facilitating the ability of participants to identify potential counterparties.[166] The requirements of the rule are also calculated to put market participants on a more even footing, reducing the effects of informational asymmetries or other forms of market power, and potentially making the swaps market less concentrated and more competitive.[167] All of this can potentially increase market liquidity.[168] The research notes cited by ISDA–SIFMA raise significant issues but provide little, if any, information on how the functioning of U.S. swaps markets has been affected, so far, by any reduced participation on the part of European swap dealers. For example, they do not provide comparative information on bid-ask spreads or other indicators of market efficiency.

Notwithstanding these considerations, the research cited by ISDA–SIFMA raises important issues that justify further inquiry. But, for the reasons stated, it does not require immediate changes to the SEF Registration Rule in the context of the *SIFMA* remand.

F. Issues Relating to Application of Commission Rules to Foreign Firms Based on Swaps Activities Within the United States

1. Background

The IIB comment focused on the cost-benefit implications for the remanded rules if the Commission employs a test based on swaps-related activities physically located within the United States for determining, in certain circumstances, whether U.S. swaps rules apply to transactions between two non-U.S. firms. ISDA–SIFMA addressed the implications of such a test more briefly, making points similar to those of IIB. As noted previously, the idea of a test based on physical presence of activities in the United States in connection with rules for swap dealers was articulated in the November 2013 DSIO Advisory; while a test based on trading by persons inside the United States on multilateral platforms located outside the country was articulated in the Division of Market Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities (November 15, 2013) ("DMO Guidance"). Before addressing the issues raised by IIB and ISDA–SIFMA, some background will be given as context.

The DSIO Advisory dealt with certain issues involving the application of transaction-level requirements to non-U.S. swap dealers, *i.e.,* foreign firms that do sufficient U.S.-related swap dealing that they are required to register with the Commission as swap dealers. In the Cross-Border Guidance, the Commission stated that its policy for applying Commission rules to such dealers in accordance with section 2(i) of the CEA would make use of a distinction between what it described as entity-level requirements and transaction-level requirements.[169] As the names imply, an entity-level requirement is a rule

---

dealers did 66% of the volume of their euro IRS trades with European swap dealers in 2013, and still did 61% of the volume of these trades with European swap dealers in the first part of 2014. *Id.* at 5.

[157] *Id.* at 1, 4–5.

[158] 7 U.S.C. 2(h)(1).

[159] 17 CFR part 50.

[160] *See* CEA section 2(h)(8), 7 U.S.C. 2(h)(8).

[161] *See* ISDA Research Note, Revisiting Cross-Border Fragmentation of Global OTC Derivatives: Mid-Year 2014 Update at 4 n.5.

[162] *See* Dodd-Frank Act, Provisionally Registered Swap Dealers, CFTC.gov, *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer* (list of registered swap dealers).

[163] *See, e.g.,* Chris Barnes, *Is an All-to-All SEF Market About to Arrive?* Clarus Financial Technology (Sept. 8, 2015), *https://www.clarusft.com/is-an-all-to-all-sef-market-about-to-arrive/.*

[164] *See, e.g.,* Evangelos Benos, Richard Payne & Michalis Vasios, Centralized trading, transparency and interest rate swap market liquidity: evidence from the implementation of the Dodd-Frank Act, Staff Working Paper No. 580 (Jan. 2016), *http://www.bankofengland.co.uk/research/Documents/workingpapers/2016/swp580.pdf;* ISDA Research Note, Cross-Border Fragmentation of Global Interest Rate Derivatives: The New Normal? First Half 2015 Update (Oct. 2015), *http://www2.isda.org/attachment/Nzk2NA==/Market%20fragmentation%20Oct15%20FINAL.pdf.* Because these sources postdate the comment period on the Commission's Initial Response, the Commission is not relying on their findings. They are cited as evidence that relevant research is ongoing.

[165] *See* 78 FR at 33553–56, 33564–81.

[166] *Id.* at 33564–65.

[167] *Id.* at 33564.

[168] *See id.* at 33554–55.

[169] 78 FR at 45331.

requirement that is recognized by the Commission as applying to a firm as a whole, while a transaction-level requirement is a requirement that is recognized by the Commission as applying at the level of the individual transaction.[170] Among the remanded rules, the Real-Time Reporting, Daily Trading Records, and Portfolio Reconciliation Rules are characterized as transaction-level rules in the Guidance.[171] According to the policy announced in the Cross-Border Guidance, transaction-level requirements would generally be expected to apply to swaps between a non-U.S. swap dealer and U.S. counterparty, but they would not generally be expected to apply, with certain exceptions, to swaps between a non-U.S. swap dealer and a non-U.S. counterparty.[172] The general exceptions are for transactions with certain non-U.S. counterparties with a particularly close connection to the U.S. market, specifically guaranteed and conduit affiliates of U.S. firms.[173]

The DSIO Advisory addresses situations where a non-U.S. swap dealer has personnel located within the United States that regularly engage in certain forms of swap dealing activity. The advisory expressed the view that a non-U.S. dealer who is "regularly using personnel or agents located in the U.S. to arrange, negotiate, or execute a swap with a non-U.S. person generally would be required to comply with the Transaction-Level Requirements" with respect to such swaps, even though a non-U.S. swap dealer generally is not required to comply with transaction-level requirements for swaps with another non-U.S. counterparty.[174] In support of this position, the advisory stated that, in the view of DSIO, "the Commission has a strong supervisory interest in swap dealing activities that occur within the United States, regardless of the status of the counterparties." [175] The advisory stated that it reflected the views of DSIO only, and did not necessarily represent the position of the Commission or any other office or division of the Commission.[176]

Shortly after the DSIO Advisory was issued, the Division of Swap Dealer and Intermediary Oversight, the Division of Market Oversight, and the Division of Clearing and Risk issued temporary no-action relief with respect to activity within the scope of that described in the DSIO Advisory regarding transaction-level requirements.[177] This relief has since been extended, most recently until the earlier of September 30, 2016, or the effective date of any Commission action with respect to the issues raised by the DSIO Advisory.[178] In January of 2014, the Commission published a notice in the **Federal Register** seeking public comment on the DSIO Advisory.[179] Comments on the DSIO Advisory remain under review and the Commission, to date, has not sought to enforce its rules against a foreign entity based solely on the type of swap dealing activity discussed in the advisory.

The DMO Guidance addressed a variety of issues regarding application of the SEF Registration Rule. As relevant here, the DMO Guidance addressed circumstances in which a multilateral swaps trading platform located outside the United States provides U.S. persons or persons located in the United States—including personnel or agents of non-U.S. persons—with the ability to trade or execute swaps on or pursuant to the rules of the platform, whether directly or through intermediaries.[180] The DMO Guidance expressed the view that provision of the ability to trade or execute swaps to U.S. located-persons, including personnel or agents of non-U.S. persons, "may create the requisite connection under CEA section 2(i) for purposes of the SEF/DCM registration requirement." [181] As a result, the Division of Market Oversight "expects that a multilateral swaps trading platform located outside the United States" that provides U.S. located persons, including personnel or agents of non-U.S. firms, with the ability to trade or execute swaps pursuant to the rules of the platform "will register as a SEF or DCM." [182] The DMO Guidance indicated that in determining whether a particular foreign trading platform needed to register as a SEF, it would take into consideration whether the platform directly solicits or markets its services to U.S.-located persons and whether a significant portion of its business involved U.S.-located persons.[183] The DMO Guidance stated that it represents the views of the Division of Market Oversight only and does not represent the views of the Commission or any other office or division of the Commission.[184]

2. Comments on Cost-Benefit Implications of DSIO Advisory

a. Points Made by Commenters

IIB identifies a number of general costs—not specific to particular rules—from applying a test based on presence in the United States to transactions between non-U.S. swap dealers and non-U.S. counterparties. The major cost, according to IIB, is that such a test would create incentives to avoid using personnel located in the United States in such transactions in order to avoid being subject to U.S. transaction-level rules.[185] While the transactions could still occur, IIB states that parties would lose certain advantages that may be associated with the use of personnel located in the United States. In particular, IIB states that personnel with the greatest expertise in some markets, such as U.S. dollar denominated interest rate swaps, are typically located in the United States.[186] Relatedly, presence in the United States may provide traders with better access to information on U.S. markets.[187] In addition, U.S.-located personnel can have advantages for time zone reasons.[188] IIB also states that some advantages of centralized risk management may be lost if functions previously handled by personnel located in the United States are split, with U.S. personnel retaining the functions for transactions with U.S. counterparties and personnel outside the U.S. handling those same functions for other transactions to avoid the effects of a U.S. presence test.[189]

IIB also states that, since such a test applies to transactions between non-U.S. firms, it exposes them to the cost of dealing with duplicative and possibly contradictory foreign regulation.[190] IIB also notes that there will be costs associated with keeping track of which swaps with non-U.S. counterparties are arranged, negotiated, or executed by personnel located in the United States and incorporating that information into compliance systems.[191] IIB further observes that, even if most of these costs fall on non-U.S. swap dealers who maintain offices in the United States, some will fall on non-U.S.

---

[170] *Id.*

[171] *Id.* at 45333.

[172] Id. at 45350–53.

[173] Id. at 45353–59.

[174] DSIO Advisory at 2.

[175] *Id.*

[176] *Id.*

[177] CFTC Letter No. 13–71.

[178] CFTC Letter No. 15–48.

[179] Request for Comment on Application of Commission Regulations to Swaps Between Non-U.S Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States, 79 FR 1347 (Jan. 8, 2014).

[180] DMO Guidance at 2.

[181] *Id.*

[182] *Id.* at 2.

[183] *Id.* at 2 n.8.

[184] *Id.* at 5.

[185] IIB at 5–6; *see also* ISDA–SIFMA at 4.

[186] IIB at 5 & n.12.

[187] *Id.* at 5.

[188] *Id.*

[189] *Id.* at 5–6.

[190] *Id.* at 6–7.

[191] *Id.* at 8.

counterparties who deal with these swap dealers.[192]

IIB also characterizes the benefits of applying a test based on physical presence in the United States to transaction-level requirements as doubtful. IIB states that transactions made subject to U.S. regulation by such a test do not give rise to risks to the U.S. financial system because they do not involve a counterparty that is a U.S. person or a guaranteed or conduit affiliate of a U.S. person.[193] IIB further asserts that this test does not offer competitive parity benefits. IIB states that, even if the Commission believes that, without a physical presence test, there is an unlevel playing field between U.S. and non-U.S. swap dealers employing U.S.-located front-office personnel, such concerns are outweighed by the applicability of foreign regulation to those non-U.S. swap dealers and by new competitive disparities such a test would create between U.S. and non-U.S. personnel.[194] Finally, IIB states that any benefits from application of rules pursuant to a physical presence test would be "largely illusory" to the extent that non-U.S. entities structure transactions to fall outside the test.[195]

IIB also discusses certain implications of the application of such a test to particular rules, including the three transaction-level rules that are part of the *SIFMA* remand.[196] IIB notes that the Portfolio Reconciliation Rule and the Daily Trading Records Rule are intended to mitigate risks to the U.S. financial system.[197] IIB states that the risks those rules are intended to address are not borne by the personnel who arrange, negotiate, or execute swaps, but rather by the parties to the swap.[198] In transactions made subject to these rules solely based on the physical presence of dealing activity in the United States, neither counterparty is a U.S. person or a guaranteed or conduit affiliate of a U.S. person so, according to IIB, the risks do not flow back to the U.S. financial system and the purposes of the rules are not served or only served in an attenuated way.[199]

With respect to the Real-Time Reporting Rule, IIB appears to acknowledge that this rule, as a general matter, may generate useful market information since it states that non-U.S. counterparties "can effectively free ride and obtain the benefits of the CEA's real-time public reporting requirements by accessing publicly available price data and taking that data into account when negotiating its swaps." [200] However, IIB asserts that these same non-U.S. counterparties have a financial incentive to avoid engaging in transactions that are subject to this rule, and will therefore have an incentive to avoid transactions involving U.S. personnel if a physical presence test applies. In particular, according to IIB, swap dealers may provide worse pricing in transactions subject to real-time reporting. This is so, according to IIB, because swap dealers must allow for the possibility that they will be unable to hedge the transaction before the terms of the underlying transaction are disclosed pursuant to the Real-Time Reporting Rule, and may face worse market terms for their hedge transactions as a result of the disclosure.[201] IIB does not, however, provide data indicating how often this phenomenon is likely to occur or comparing bid-ask spreads in transactions subject to the Real-Time Reporting Rule with those in similar transactions not covered by the rule. IIB also states that application of a physical presence test to the Real-Time Reporting Rule may be costly to implement because current systems used by non-U.S. swap dealers to identity which of their swaps must be reported under the rule do not track information on the location of front-office personnel involved in arranging, negotiating, or executing the swap.[202] IIB does not provide quantitative cost estimates, however.

b. Commission Response

The Commission agrees with IIB and ISDA–SIFMA that the test articulated in the DSIO Advisory raises significant issues that need to be considered by the Commission. However, their comments are overwhelmingly presented as a criticism of the test itself, not as a basis for substantive rule changes. The *SIFMA* v. *CFTC* remand order does not cover this issue, because the test relates to the geographical scope of application of certain Commission rules and not to their substance.[203] Accordingly, the Commission will not pass judgment on it in the context of this release. Rather, as noted above, the Commission has separately solicited, and is considering, comments on the DSIO Advisory; and, in the interim, the Commission's regulatory divisions have granted staff no-action relief.

For purposes of the remand, the Commission will address a narrower issue: do the possible cost-benefit implications of a physical presence test sufficiently alter the evaluation of the costs and benefits of the three remanded transaction-level rules to require the Commission to make changes in the substance of those rules at the present time. The Commission concludes that they do not, for a number of reasons:

1. The cost-benefit implications of the test articulated in the DSIO Advisory for the three remanded transaction-level rules are currently uncertain because the Commission is still considering public comments and it is uncertain at this time whether the Commission will apply the test. As a result of no-action relief, the test has not, to date, been applied or, therefore, affected the costs and benefits of the remanded rules. As a result, even if the test potentially might affect costs and benefits in a manner that is distinct from the mere fact of extraterritorial regulation, it is not appropriate at this time to fashion substantive rule changes to account for it.

2. The test articulated in the DSIO Advisory affects a somewhat limited segment of the market—only swap transactions that a non-U.S. swap dealer enters into with non-U.S. counterparties that are not guaranteed or conduit affiliates of U.S. persons and that are arranged, negotiated, or executed using personnel or agents of the non-U.S. swap dealer that are located in the United States. This limits the implications of the test for the overall costs and benefits of the remanded rules even if the points made by the commenters are important for purposes of the costs and benefits of the rules as applied to transactions within the scope of such a test. In addition, this fact makes it likely that the best way to address issues raised with respect to the test will involve assessing the test itself rather than making rule changes that would affect numerous transactions outside its scope. Consistent with this conclusion, the IIB comment makes recommendations with regard to application of the test itself, but makes no recommendations for across-the-board changes in the substance of the

---

[192] *Id.* at 8–9.

[193] *Id.* at 6. As explained above, under the policies for applying section 2(i) announced in the Cross-Border Guidance, transactions between a non-U.S. swap dealer and a counterparty that is a U.S. person or guaranteed or conduit affiliate are subject to transaction-level requirements independently of the location of the swap dealer's personnel.

[194] IIB at 6.

[195] *Id.*

[196] Much of IIB's discussion of specific rules concerns external business conduct and entity-level rules that are outside the remand and therefore are not addressed here. *See, e.g.,* IIB at 14–16, 19–20.

[197] IIB at 9.

[198] *Id.*

[199] *Id.* at 9 & n.27.

[200] *Id.* at 12.

[201] *Id.*

[202] *Id.*

[203] *See SIFMA,* 67 F. Supp. 3d at 434–35.

three remanded transaction-level rules.[204] Similarly, ISDA–SIFMA identifies costs that it states would be caused by implementation of the test, but does not make recommendations for changes to the substance of the remanded transaction-level rules as a way of addressing those costs.[205]

3. Even assuming that a test based on dealing activities by non-U.S. firms physically present in the United States were to be implemented for transaction-level rules, there are a number of considerations that limit, though they do not eliminate, the weight that can be given to some of the points made by commenters with respect to the implications of such a test for costs and benefits.

(a) IIB and ISDA–SIFMA do not provide quantitative information or estimates of the effects they project.[206] The fact that staff no-action relief was promptly put in place presumably affected the ability to obtain quantitative information on the effects of the test in the DSIO Advisory, but the absence of quantitative information, or even estimates, makes it difficult to assess how important the effects described by the commenters would be in practice.

(b) Convergence between foreign and U.S. regulation may reduce incentives to avoid U.S. regulation and therefore to avoid making use of U.S. personnel or agents to avoid such regulation. For example, as described above, the EU currently is planning to implement public reporting of swaps transactions broadly similar to the Real-Time Reporting Rule in 2018.

(c) The discussion of the implications of a physical presence test for the Real-Time Reporting Rule in the IIB comment asserts that swap dealers will tend to offer worse pricing to counterparties in transactions subject to the Real-Time Reporting Rule because reporting may expose dealers to worse prices in their hedging transactions.[207] However, this possibility was recognized in the original rulemaking and provisions were built into the rule to minimize the chance that the otherwise anonymous public reporting of trades would provide the market with information that would enable traders to identify planned, but not-yet-executed, hedge trades by dealers and take advantage of that information. These provisions include time delays for reporting of large transactions[208] and reporting of rounded or "capped" notional amounts rather than the actual notional amount for block trades and certain other large transactions.[209] The cost-benefit discussion in the preamble to the rule concluded that time delays "will counter the possibility for front-running large block trades before they can be adequately hedged."[210] The IIB comment does not address the consideration of this issue in the original rulemaking and in a subsequent rulemaking that amended the anonymity-protecting provisions.[211]

3. Comments on Application of SEF Registration Rule to Non-U.S. Trading Platforms Based on Provision of Services Within the United States

a. Points Made in Comments

IIB discusses cost-benefit issues arising from the application of a test based on provision of services within the United States to the SEF Registration Rule pursuant to the interpretation of section 2(i) in the DMO Guidance.[212] As described above, according to this interpretation, a non-U.S. swaps trading platform would be subject to the SEF Registration Rule even if the platform provides swap execution services solely to non-U.S. persons, if it provides personnel or agents of those persons with the ability to make trades from locations within the United States. According to IIB, this has a number of negative effects. IIB states that some non-U.S. multilateral trading platforms have refused access to U.S.-located personnel of foreign firms in order to avoid the costs of having to register as SEFs.[213] According to IIB, this encourages U.S. personnel of non-U.S. entities to trade swaps bilaterally, over-the-counter, contrary to the Commission's overall transparency objectives.[214] IIB does not, however, provide information on how often these phenomena may have occurred or give examples. IIB also does not discuss whether U.S. SEFs or other non-U.S. multilateral trading platforms may sometimes be able to provide substitute services if a particular non-U.S. multilateral trading platform refuses access. IIB also notes that the test in the DMO Guidance extends to trades executed through an intermediary and states that the benefits of SEF registration are highly attenuated in transactions where U.S. personnel of non-U.S. firms trade on a non-U.S. multilateral trading facility through an intermediary because the intermediary will be regulated by the Commission and this will provide significant customer and market integrity protections.[215]

b. Commission Response

As with the DSIO Advisory, the issues raised by IIB with respect to the DMO Guidance relate to the geographic scope of the SEF Registration Rule as opposed to substantive rule requirements that may carry unique cross-border costs. Consistent with this, IIB recommends changes in the geographic approach taken in the DMO Guidance and does not recommend changes in the SEF Registration Rule itself. Moreover, to the extent that there are cost implications of the type identified by IIB, they relate to a limited subset of the market—transactions between non-U.S. firms that the firms would prefer to have executed on a non-U.S. trading platform with at least one firm using a U.S.-based trader. For these reasons, the Commission concludes that the issues raised by IIB with respect to the DMO Guidance do not warrant changes in the substantive provisions of the SEF Registration Rule and are beyond the scope of the remand.

G. Additional Observations Made by Commenters on Costs and Benefits of Extraterritorial Application of Particular Rules

1. SEF Registration Rule

The UBS comment emphasized the benefits of the SEF Registration Rule, particularly provisions requiring SEFs to provide impartial access so that market participants can compete on a level playing field and to provide straight-through-processing, which is designed to make the workflow from trade execution to clearing as robust and efficient as possible.[216] The comment endorsed the extraterritorial application of the rule consistent with section 2(i), stating that, "[i]n light of the global and flexible nature of swaps execution, failing to apply the provisions of [the rule] to all activities subject to the Commission's jurisdiction would risk undermining the importance of the core principles contained therein as the global swaps market continues to evolve."[217] The comment further stated that, as other jurisdictions proceed with finalizing swap execution rules, the Commission should attempt to maximize harmonization while preserving core principles that are critical to a well-functioning market.[218]

---

[204] *See* IIB at 16–19.

[205] ISDA–SIFMA at 4.

[206] The ISDA research notes on market fragmentation do not relate to the test in the DSIO Advisory since they involve transactions between European and U.S. swap dealers, while the DSIO Advisory primarily relates to transactions between two non-U.S. firms.

[207] IIB at 12.

[208] *See* 17 CFR 43.5.

[209] *See* 17 CFR 43.4(h).

[210] Real-Time Reporting Rule, 77 FR at 1239.

[211] *See* Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866, 32928–31 (May 31, 2013) (discussing costs and benefits of amendments to anonymity protection provisions of Real-Time Reporting Rule).

[212] IIB at 13–14.

[213] *Id.* at 13.

[214] *Id.*

[215] *Id.* at 14.

[216] UBS at 1.

The Commission agrees that broad application of the SEF Registration Rule within its jurisdiction will benefit the market in terms of transparency, efficiency, and competitiveness. The Commission also agrees that realization of those benefits may be enhanced by harmonization with foreign regimes, consistent with the Commission's own regulatory objectives.

ISDA–SIFMA also recommended harmonization in the SEF area; and specifically urged the Commission to "re-examine" what ISDA–SIFMA considered to be a "very rigid" approach to execution methods in the SEF Registration Rule in light of what ISDA–SIFMA characterized as greater flexibility for swap trading platforms in the European Union under MiFID II.[219] As described previously, the MiFID II regime is still in the process of being implemented and is not expected to be in operation until 2018. The Commission also notes that the SEF Registration Rule provides for flexibility in execution methods, albeit not in the precise ways that ISDA and SIFMA have recommended in other documents.[220] In particular, the rule requires SEFs to make available trading via an order book, but also allows trades to be executed on SEFs using a request for quotes system.[221] It also allows block trading for large transactions.[222] Additional flexibility for SEFs with respect to block trades has been provided through staff no-action relief.[223] The MiFID II standards for pre-trade transparency in transactions on derivatives trading platforms, in some important respects, may be more stringent and prescriptive than the Commission's SEF rules.[224]

2. SDR and Historical SDR Reporting Rules

Commenters observed that the current international regime in which, pursuant to international commitments made following the 2008 financial crisis, multiple jurisdictions have put in place requirements to report data on swap transactions to swap data repositories or their foreign equivalents has increased costs and reduced benefits of reporting. For example, ISDA–SIFMA stated:

> [I]mplementation of trade reporting mandates in different jurisdictions is producing a disjointed and costly framework of overlapping reporting obligations, in some cases in conflict with local laws, with market participants reporting to a multiplicity of trade repositories on different bases. Despite having access to tremendous amounts of information, regulators are unable to consolidate, aggregate and effectively use that information.[225]

JBA and IIB made substantially similar observations.[226] None of the commenters provided quantitative data on, or estimates of, the cost of duplicative reporting. Commenters also did not provide detailed or specific qualitative information on how the Commission's reporting rules interact with foreign requirements. With the exception of a recommended change in Commission rule 45.2(h), discussed below, none of the commenters recommended specific substantive changes in the SDR or Historical SDR Reporting Rules. Commenters generally recommended that the Commission address the current problems with the international reporting regime through international cooperative means such as memoranda of understanding with foreign regulators, initiatives to promote data standardization and remove legal obstacles to cross-border access to reported information, and international rules to determine parties responsible for reporting.[227] IIB also recommended that, while efforts to resolve international data reporting issues are ongoing, the Commission keep in place and formalize existing no-action relief.[228]

The Commission agrees that improvements in standardization and sharing of reported swap data across jurisdictions would be beneficial, and Commission staff is working toward these objectives, as noted in section IV.D, above. Among other benefits, they might facilitate the use of substituted compliance or similar arrangements to reduce duplicative regulation in the swap reporting area. By their nature, however, improvements in these areas require international cooperative efforts, as commenters generally recognized. As a result, the issues with swap data reporting raised by the commenters do not support unilateral changes in the substance of the SDR or Historical SDR Reporting Rules in the context of the present remand.

V. Commenters' Recommendations for Changes in Substantive Requirements of Rules

A. Introduction

As noted above in Part III, under the *SIFMA* decision, the ultimate mandate to the Commission on remand, following consideration of any differences between the extraterritorial and domestic costs and benefits of the remanded rules, is to determine whether such consideration requires any changes to be made in the substantive requirements of the remanded rules and, if not, to give a reasoned explanation why not.[229] For this purpose the Commission, as mentioned above, asked commenters about "the implications of" any differences between extraterritorial and domestic costs and benefits "for the substantive requirements" of the remanded rules.[230] In addition to general discussions of cross-border costs and benefits of some of the remanded rules, addressed in Part IV, above, commenters put forth two requests for specific changes in particular substantive rule requirements, which are discussed here. The Commission believes that it is useful in this context to evaluate the commenters' proposed changes in light of the fact that the Commission is required to apply to its own regulatory proposals pursuant to section 15(a) of the Commodity Exchange Act ("section 15(a)").[231] The Commission also incorporates by reference the discussions in the preceding sections.

In addition to making recommendations regarding the substance of some of the remanded rules, the commenters made a number of recommendations as to how the

---

[217] *Id.*

[218] *Id.*

[219] ISDA–SIFMA at 3.

[220] *See generally* ISDA, Path Forward for Centralized Execution of Swaps (Apr. 2015), cited in ISDA–SIFMA at 3 n.7.

[221] 17 CFR 37.9.

[222] 17 CFR 37.9(a)(2).

[223] *See* CFTC Letter No. 15–60.

[224] *See, e.g.,* MiFIR, *supra* note 100, at 2–3 (recital 8); Amir Khwaja, *MiFID II and Transparency for Swaps: What You Need to Know,* Clarus Financial Technology (Sept. 29, 2015), *https://www.clarusft.com/mifid-ii-and-transparency-for-swaps-what-you-need-to-know/.*

[225] ISDA–SIFMA at 3.

[226] JBA at 2–3; IIB at 19–20.

[227] JBA at 3; IIB at 20.

[228] IIB at 20.

[229] *See* 67 F. Supp. 3d at 435.

[230] Initial Response, 80 FR at 12558.

[231] Section 15(a)(1), 7 U.S.C. 19(a)(1), requires the Commission, with certain exceptions, to consider the costs and benefits of its action before promulgating a regulation or issuing an order. Section 15(a)(2), 7 U.S.C. 19(a)(2) states that the costs and benefits of the proposed Commission action shall be evaluated in light of—(A) considerations of protection of market participants and the public; (B) consideration of the efficiency, competitiveness, and financial integrity of futures markets; (C) considerations of price discovery; (D) considerations of sound risk management practices; and (E) other public interest considerations.

Commission should apply section 2(i) in particular circumstances to establish the extraterritorial scope of one or more of the rules.[232] For purposes of its response to the remand order, the Commission will not attempt to make determinations regarding the merits of commenters' recommendations for rule changes or other actions defining the extraterritorial scope, as opposed to the substance, of the rules.

B. Expanded Use of Safe Harbors in the Swap Entity Definition Rule

1. Commenter Proposal

Based on its observation that foreign entities are likely to have more difficulty figuring out U.S. law than U.S. firms, ISDA–SIFMA states that the costs of extraterritorial application of rules could be mitigated by "greater clarity around the scope of Commission rules and greater use of safe harbors." [233] The Commission agrees that use of safe harbors or other forms of "bright line" rules can make it easier for businesses to determine whether they are in compliance with regulations. On the other hand, use of bright line rules commonly involves a trade-off between simplicity of implementation and risks of either underinclusiveness or overinclusiveness with regard to the policy objectives of the regulation. As a result, suggestions for greater use of bright line rules need to be evaluated in specific contexts.

ISDA–SIFMA makes only one specific suggestion for greater use of safe harbor provisions, in the definition of a swap dealer. The comment states:

> [P]ersons utilizing the de minimis exemption from swap dealer status may be avoiding transactions with U.S. swap dealers due to uncertainty regarding whether their swaps hedging their own financial risks would be considered to be entered into "in connection with dealing activity." Expansion of the safe harbor now restricted to physical commodity hedging, so as to encompass a broader array of hedging transactions, could mitigate this effect.[234]

The ISDA–SIFMA recommendation relates to an issue that was considered by the Commission at the time of the original Swap Entity Definition rulemaking. As noted above, under the Commission's regulation defining a swap dealer, a person who enters into swap transactions is only considered to be a swap dealer if its swap positions in connection with its dealing activity exceed a specified de minimis amount, currently $8 billion.[235] Thus, in order to determine if it needs to register as a swap dealer, a business that enters into a large volume of swaps may need to evaluate whether its positions involve dealing or are for some other purpose. In close cases, this may involve a judgment taking into account a number of factors.[236] However, the Commission has specified that some categories of swap transactions are not considered in determining whether an entity is a swap dealer. One of these safe harbor categories is swaps used to hedge market positions in physical commodities.[237]

At the time of the original rulemaking, the Commission considered whether to also create a safe harbor for swaps used to hedge commercial risks—including financial risks—not associated with physical commodities.[238] The Commission stated that hedging generally was not a form of dealing activity, but determined that a *per se* safe harbor for commercial hedging should not be adopted because, in practice, it is often difficult to distinguish commercial hedging transactions from dealing transactions without taking into consideration the surrounding facts and circumstances.[239] "[N]o method has yet been developed to reliably distinguish, through a *per se* rule between: (i) [s]waps that are entered into for the purpose of hedging or mitigating commercial risk; and (ii) swaps that are entered into for the purpose of accommodating the counterparty's needs or demands or otherwise constitute swap dealing activity, but which also have a hedging consequence." [240] By contrast, the Commission had extensive experience in the futures market with exclusions for hedging risks associated with physical commodities and therefore concluded that it could safely make use of a *per se* rule for swaps used for this purpose.[241] The hedging safe harbor was adopted as an interim final rule and the Commission invited comments, including on whether the safe harbor should be expanded to include hedging of financial risks.[242] However, the Commission has not, to date, found reason to modify the safe harbor as originally promulgated.

The ISDA–SIFMA safe-harbor proposal thus raises issues that go well beyond ISDA–SIFMA's concern with making U.S. law easier for foreign firms to figure out. Maintaining the integrity of the line between hedging and dealing activities is fundamental to a definition of a swap dealer that is meaningful in practice and thus fundamental to the effectiveness of the Dodd-Frank regulatory regime for swap dealers, both foreign and domestic. Unfortunately, the ISDA–SIFMA comment does not put forward a solution to the problem identified in the original rulemaking—devising a reliable *per se* rule for distinguishing between swaps entered into to hedge commercial risks and swaps that constitute dealing activity without taking into consideration additional facts and circumstances.

2. Evaluation in Light of Section 15(a) Factors

a. Protection of Market Participants and the Public

Expanding the hedging safe harbor in the definition of swap dealer to cover hedging of financial risks poses significant risks of reducing protection of market participants and the public. As noted above, the Commission found in the preamble to the Swap Entity Definition Rule that no reliable *per se* method has been found for distinguishing between hedging financial risks using swaps and swap dealing. As a result, a safe harbor for hedging financial risks could increase the possibility that some entities engaged in a large volume of swap dealing would be misclassified and not treated as dealers. This is particularly true since, in close cases, businesses would have incentives to label transactions as hedging rather than dealing to take advantage of the safe harbor. Thus, a safe harbor for hedging financial risks could result in some entities engaged in large volumes of swap dealing not being subject to the provisions of Dodd-Frank and Commission implementing regulations designed to protect market participants and the public against wrongdoing by swap dealers and against the risks to the financial system that were associated with unregulated swap dealing before Dodd-Frank. This includes both some of the remanded rules and statutory provisions and Commission rules that are not subject to the remand order but that would not apply to firms that were no longer classified as swap dealers as a result of an expanded safe harbor.[243] This concern applies to overseas as well as domestic entities since, given the de minimis volume element of the swap dealer definition and limits of section 2(i), a safe harbor would only be relevant to foreign entities engaged in a reasonably large volume of swaps that affect or are connected to U.S. markets. The ISDA–SIFMA comment does not specify methods for crafting a safe harbor for hedging financial risks that avoids misidentification or otherwise give reasons to overturn the Commission's judgment regarding the workability of a safe harbor in the preamble to the Swap Entity Definition Rule.

---

[232] An example is IIB's recommendation that the Commission not make use of a test based on the physical presence of swap dealing activity in the United States test in determining what transactions are subject to transaction-level rules. IIB at 16–19.

[233] ISDA–SIFMA at 3.

[234] *Id.*

[235] 17 CFR 1.3(ggg)(4)(i)(A).

[236] *See, e.g.,* 77 FR at 30614–16 (discussing interpretive issues in application of statutory definition of swap dealer).

[237] 17 CFR 1.3(ggg)(6)(iii).

[238] 77 FR at 30611–13.

[239] *Id.*

[240] *Id.* at 30613.

[241] *Id.* at 30612–13.

[242] *Id.* at 30613.

b. Efficiency, Competitiveness, and Financial Integrity

A safe harbor for hedging of financial risks poses a significant risk of reducing efficiency, competitiveness, and financial integrity because, as already explained, it could result in firms that engage in large volumes of swap dealing not being subject to Dodd-Frank provisions and Commission regulations that apply to swap dealers and that are themselves designed to promote efficiency, competitiveness, and financial integrity in the business of swap dealing. Examples include the Daily Trading Records, Risk Management, Chief Compliance Officer, Portfolio Reconciliation, and Real-Time Reporting Rules, among others.

c. Price Discovery

The recommended safe harbor appears unlikely to have a significant effect on price discovery. A safe harbor for swaps used to hedge financial risks could increase the volume of swaps transactions by some amount, but in light of the limited circumstances in which it is likely to make a difference, any change in volume of transactions is unlikely to affect price discovery. This is particularly true with respect to the even narrower category of foreign swaps market participants who might be affected by an expanded safe harbor.

d. Sound Risk Management Practices

The recommended safe harbor could increase the use of swaps to manage financial risks in some limited circumstances—for example where a firm's volume of swap transactions is close to the de minimis amount for classification as a swap dealer, the firm wishes to expand its use of swaps to hedge financial risks, the costs of regulation as a swap dealer would outweigh the benefits from expanded use of swaps, and the nature of the firm's business model creates ambiguity as to whether it is engaged in hedging or dealing in the absence of a safe harbor. It is unclear from available information how often this is likely to be the case. For foreign firms, a safe harbor is unlikely to significantly increase use of swaps to manage risks because such firms can already avoid regulation as U.S. swap dealers by entering into swaps beyond the de minimis amount with non-U.S. counterparties.

The recommended safe harbor also has a significant likelihood of reducing use of sound risk management practices by some firms that engage in swap dealing. As discussed previously, a safe harbor for swaps used to hedge financial risks may lead to some firms that engage in a large volume of swap dealing affecting U.S. markets being misclassified and not regulated as swap dealers. Many of the Dodd-Frank provisions and Commission rules applicable to swap dealers are designed to ensure that swap dealers adopt sound risk management practices, including, but not limited to, the Daily Trading Records, Risk Management, Chief Compliance Officer, and Portfolio Reconciliation Rules.

e. Other Public Interest Considerations

For some firms, an expanded safe harbor could contribute to efficiency by making it easier to determine whether the firm needs to comply with regulations applicable to swap dealers. This would be true primarily, if not only, for firms that engaged in a total volume of swap transactions that approached or exceeded the de minimis amount and whose overall business model did not otherwise make clear whether or not they were engaged in swap dealing. ISDA–SIFMA does not provide information on the number of firms, either foreign or domestic, likely to be in this category and the Commission is not aware of other sources of information on this question. ISDA–SIFMA suggests that ease of determining whether a firm is within the definition of a swap dealer would be particularly valuable to foreign firms, on the theory that such firms have difficulty coping with U.S. law. However, it is unclear how important this factor would be for firms to which the recommended safe harbor is most relevant since such firms, for the reasons just stated, would likely have some level of financial and legal sophistication, whether domestic firms engaged in substantial swaps activity or foreign firms engaged in a significant volume of cross-border swaps affecting or connected to U.S. markets.

Relatedly, the recommended safe harbor might encourage some foreign counterparties who currently enter into swaps to hedge financial risks with non-U.S. firms to move some of their business to U.S. swap dealers. In particular, this might be true for foreign counterparties whose other business does not make them swap dealers; who engage, or would potentially engage, in more than the de minimis amount of swaps with U.S. persons; whose business model currently creates ambiguity as to whether the swaps in question are a form of dealing in the absence of a safe harbor; and who do not have other reasons for confining their swaps business to local, non-U.S., dealers. The available record does not provide information on the number of firms that would meet all these criteria or the volume of swaps business that would be involved. However, given the limited circumstances in which a safe harbor would have an effect, it appears unlikely, in the absence of information to the contrary, that the volume of swaps involved would have a major impact on the overall liquidity of U.S. markets.

Based on its evaluation of these factors, the Commission concludes that expanding the hedging safe harbor is not warranted on the present record. This is particularly true in light of (1) the fact that the suggested expansion of the safe harbor would apply across the board and not just in circumstances where foreign firms have greater difficulty than U.S. firms in applying the swap dealer definition; (2) the importance of maintaining the integrity of the swap dealer definition to the entire Dodd-Frank regulatory regime; and (3) the conclusion in the original Swaps Entity Definition rulemaking that there is no reliable *per se* test for distinguishing between hedging financial risk and dealing, and the absence of any showing by the commenters that this conclusion is incorrect.

C. "Re-examination" of Application of Rule 45.2(h) to Non-Registrants

1. Commenter Proposal

ISDA–SIFMA recommends that the Commission "re-examine the provisions of Regulation 45.2 that require non-registrants 'subject to the jurisdiction of the Commission' to make books and records available to the Commission and other U.S. authorities.''[244] Commission rule 45.2 generally deals with recordkeeping requirements for registered entities and parties involved in swaps transactions. Section 45.2(h) requires covered persons subject to the Commission's jurisdiction, including registrants such as swap dealers but also swap counterparties not required to register with the Commission, to make records available on request to the Commission, the Justice Department, and the Securities and Exchange Commission; and to U.S. prudential regulators (*i.e.*, bank regulators) as authorized by the Commission.[245] The ISDA–SIFMA comment does not explain specifically how and to what extent costs of compliance for § 45.2(h) differ for foreign and domestic entities, beyond ISDA–SIFMA's general assertion, discussed in section IV.A above, that some foreign firms may have more difficulty coping with U.S. law than U.S. firms.

---

[243] Relevant remanded rules include the Swap Entity Registration, Daily Trading Records, Risk Management, Chief Compliance Officer, and Portfolio Reconciliation Rules. Examples of other requirements imposed on swap dealers to protect market participants and the public include the business conduct standards set forth at 17 CFR part 23, subpart H.

2. Evaluation in Light of Section 15(a) Factors

a. Protection of Market Participants and the Public

Eliminating or significantly restricting application of § 45.2(h) to non-registrants, including both domestic swaps counterparties and foreign counterparties sufficiently involved in U.S. swaps markets to be subject to U.S. regulation pursuant to section 2(i), can be expected to reduce protection of market participants and the public since prompt and efficient access to records is necessary for effective regulation of financial activity, both for purposes of law enforcement and for purposes of market surveillance. This benefit is limited somewhat by the alternative possibilities of obtaining information about swap market participants by means such as legal process or obtaining the assistance of foreign regulators. However, such alternatives are likely to be slower and less efficient than use of § 45.2(h). Prompt and efficient access to records is particularly important in developing situations, for example when there is reason to believe that fraud or other law violations are ongoing and that records may be destroyed or assets dissipated or hidden. It is similarly important when there is reason to believe that insolvency or other business problems at a firm with a large swaps portfolio may pose risks to other market participants or the market in general. While it is not practicable to quantify the benefits of § 45.2(h) in protecting market participants and the public, there is strong reason to believe that the benefits are high relative to the costs since the provision commonly is employed in situations where regulators have a specific reason to be concerned about a firm's swaps activities or otherwise have a specific need for information.

b. Efficiency, Competitiveness, and Financial Integrity

Eliminating or significantly restricting application of § 45.2(h) to non-registrants is likely to reduce efficiency, competitiveness, and financial integrity of relevant markets since it would make it more difficult to enforce legal requirements designed to promote these objectives, such as the anti-fraud and anti-market manipulation provisions of the Commodity Exchange Act.[246] As noted in the previous section, it would also make it more difficult for U.S. authorities to make prompt inquiries when the financial integrity of a market participant is in question. The Commission does not have data that would permit it to quantify these effects, however. The Commission also does not have quantitative information on the costs of § 45.2(h). However, there is reason to believe that overall costs are relatively modest since this provision does not itself require either recordkeeping or routine making of reports, but only provision of access to existing records on request.

c. Price Discovery

Changes in § 45.2(h) appear unlikely to have any direct impact on price discovery. Scaling back this requirement could have negative indirect effects on price discovery since the provision can be used to investigate violations of provisions designed to promote the price discovery function of Commission-regulated markets, such as the prohibition against price manipulation.[247] The Commission lacks information that would permit it to quantify any such effects, however.

d. Sound Risk Management Practices

Scaling back § 45.2(h) appears unlikely to have a significant effect on use of swaps to manage risks since, as noted, this provision does not require recordkeeping or routine making of reports, but only requires that records be made available to the CFTC and other authorities on request.

e. Other Public Interest Considerations

Conceivably, some foreign non-registrant swap counterparties who would prefer to avoid even a chance of involvement with U.S. authorities might switch business from foreign swap providers to U.S. swap dealers if § 45.2(h) did not apply to them. ISDA–SIFMA does not provide information on how often this would be the case. However, in the absence of information to the contrary, it appears unlikely that any such effect would be large enough to have a significant impact on the overall liquidity of U.S. markets since the foreign firms in question would still be subject to inspection by their home authorities; and their records might still become available to U.S. authorities, albeit less expeditiously, through mechanisms such as cooperative enforcement arrangements with foreign jurisdictions.

In light of these considerations and the importance of access to books and records for law enforcement, market surveillance, and other regulatory purposes, the Commission concludes that ISDA–SIFMA has not justified an amendment to § 45.2(h) to exclude non-registrants.

D. Process Recommendations

Commenters made a number of recommendations for Commission engagement in processes that could be expected to lead to substantive changes in some of the remanded rules. In particular, commenters generally supported Commission engagement in efforts for international harmonization of rules in the area of swap data reporting and regulation of SEFs and their foreign equivalents.[248] The Commission agrees that such efforts are important and is participating in them, as described in section IV.C and IV.D, above. However, they are not at the point where they can provide the basis for specific rule changes in the context of the *SIFMA* remand. Consistent with this, commenters did not identify specific rule changes based on harmonization efforts to date.

VI. Conclusion

The comments on the Initial Response identify some respects in which the costs and benefits of the extraterritorial application of the remanded rules may differ from the domestic application. However, taking into account the facts and analysis in the original rulemaking preambles as well as the additional consideration of costs and benefits in the Initial Response and this release, the record does not establish a need to make changes in the substantive requirements of the remanded rules as originally promulgated at the present time and in the context of the *SIFMA* remand order.

---

[244] ISDA–SIFMA at 3.

[245] 17 CFR 45.2(h).

[246] CEA sections 4b(a)(2), 6(c), 7 U.S.C. 6b(a)(2), 9.

[247] CEA section 6(c), 7 U.S.C. 9.

[248] *E.g.*, ISDA–SIFMA at 3; IIB at 20.

Issued in Washington, DC, on August 4, 2016, by the Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Final Response to District Court Remand Order in *Securities Industry and Financial Markets Association, et al.* v. *United States Commodity Futures Trading Commission*—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioner Bowen voted in the affirmative. Commissioner Giancarlo voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

I support the two actions the Commission and staff have taken today, which address issues related to the cross-border application of our rules on swaps. I thank the staff for their hard work on these matters, my fellow Commissioners for their consideration, and the public for their feedback.

Today, the CFTC has issued a final response to the remand order of the U.S. District Court for the District of Columbia in litigation brought by the Securities Industry and Financial Markets Association and other industry associations against the Commission. The litigation challenged the extra-territorial application of several swaps rules and unsuccessfully sought to invalidate the Commission's 2013 cross-border guidance. Today we have supplemented our earlier answer to the Court's inquiry regarding the costs and benefits of the overseas application of those rules.

In addition, Commission staff today has extended for another year the previously issued no-action relief from certain transaction-level requirements for transactions between non-U.S. parties that regularly use personnel or agents located in the U.S. to "arrange, negotiate, or execute" them.

These actions are part of our overall effort to address the cross-border implications of swap activity, while at the same time harmonizing derivatives regulation with other jurisdictions as much as possible. The past several years have been marked by progress in this regard. In the last year alone, we have accomplished a great deal in each of the four basic areas of derivatives regulation—central clearing, oversight of swap dealers, trading and reporting. Consider the following:

With regard to central clearing, we and the European Commission agreed upon a common approach regarding requirements for central clearing counterparties (CCPs), which will permit U.S. and European CCPs to continue providing clearing services to entities in each other's jurisdiction. We also granted exempt status to several foreign clearinghouses. The CFTC is also co-chairing a task force with international regulators to address resiliency requirements and engage in recovery planning, while also participating in international resolution planning for CCPs.

When it comes to the oversight of swap dealers, we harmonized the substance of rules setting margin requirements for uncleared swaps, one of the most important parts of our overall regulatory framework. We also agreed on an international timetable for implementation. Although the European Commission recently delayed their implementation for technical reasons, they have made clear that this delay will be modest. We adopted a cross-border application of our margin rule, which provides a broad scope of substituted compliance. And we are currently working with other jurisdictions on substituted compliance determinations that will supplement those we have previously made in other areas.

On trading, the CFTC is looking at ways to harmonize our swap execution facility rules with those of other jurisdictions. For example, now that the European Securities and Markets Authority has published its MiFiD II technical standards, we are working with our European counterparts to look at differences in our respective rules and make progress toward harmonization. We also recently issued no-action relief to an Australia-based trading platform.

We are focused on harmonizing data reporting standards as well. The CFTC co-chairs an international task force that is leading this effort. CFTC staff is also working with international regulators and the Office of Financial Research to develop effective means to identify swaps and swap activity by participant, transaction and product type throughout the swap lifecycle.

We will continue making progress in all these areas. For example, this fall I intend to ask the Commission to consider a rule to begin to address the "arrange, negotiate, or execute" issues raised by the no-action relief that we have extended today.

Our first responsibility is to implement our nation's laws faithfully, which requires us to address the cross-border implications of swap activity. A strong global regulatory framework is the best way to do so, and that is why harmonization is so important. To focus on the fact that full harmonization has not been reached, or that progress sometimes occurs in fits and starts, I believe misses the forest for the trees. Regulations are implemented by individual nations, or unions of nations, each of which has its own legal traditions, regulatory philosophies, political processes, and often, statutory timetables. There will always be differences, just as there are in every other area of financial regulation. The more important story is we are making good, steady progress.

Appendix 3—Dissenting Statement of Commissioner J. Christopher Giancarlo

I respectfully dissent from the Commodity Futures Trading Commission's (CFTC or Commission) final response in the SIFMA litigation.

The CFTC appears to have addressed the District Court's inquiry whether the costs and benefits identified in the remanded rulemakings apply to swaps activities outside of the United States (U.S.) and what differences are present in the costs and benefits between domestic and overseas activities. Nevertheless, it must be noted that the Commission has repeatedly failed to coordinate effectively with foreign regulators to "implement global standards" in financial markets as agreed to by the G–20 leaders in Pittsburgh in 2009.[1] The lack of harmonization in the implementation date for margin for uncleared swaps is the latest example. The result for financial markets has been a complex, conflicting and costly array of CFTC cross-border regulations.

The Commission's uncoordinated approach to regulation of swaps trading started with its July 2013 Interpretative Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations (Interpretative Guidance).[2] The Interpretative Guidance, which the District Court found is a non-binding general statement of policy, basically stated that every single swap a U.S. Person enters into, no matter where it is transacted, has a direct and significant connection with activities in, and effect on, commerce of the U.S. that requires imposing CFTC transaction rules.[3] This uncoordinated approach has continued through the CFTC's Cross-Border Application of Margin Requirements,[4] in which the Commission unilaterally imposed a set of preconditions to substituted compliance that is overly complex, unduly narrow and operationally impractical.[5]

Unfortunately, the Commission's uncoordinated approach to cross-border harmonization has allowed foreign regulators to respond in kind. The CFTC's and European Union's (EU) tortured and repeatedly delayed central counterparty clearinghouse equivalence process is a stark example, as is the EU's recent decision to postpone until 2017 new rules setting collateral requirements for uncleared derivatives.

The CFTC must do better to work with foreign regulators to implement global standards consistently in a way that ensures a level playing field and avoids market fragmentation, protectionism and regulatory arbitrage.[6] As a good start, the CFTC should replace its Interpretative Guidance with a formal rulemaking that recognizes outcomes-based substituted compliance for competent non-U.S. regulatory regimes.[7] Such an approach is practical, provides certainty and is in keeping with the cooperative spirit of the 2009 G–20 Pittsburgh Accords.[8]

---

[1] G–20 Leaders' Statement, The Pittsburgh Summit at 7 (Sept. 24–25, 2009) (G–20 Statement), *available at http://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf.*

[2] 78 FR 45292 (Jul. 26, 2013).

[3] *Id.*

[4] 81 FR 34818 (May 31, 2016).

[5] *Id.* at 34853–54.

[6] G–20 Statement, par. 12.

[FR Doc. 2016–18854 Filed 8–15–16; 8:45 am]

BILLING CODE 6351–01–P

---

[7] Keynote Address of CFTC Commissioner J. Christopher Giancarlo at The Global Forum for Derivatives Markets, 35th Annual Burgenstock Conference, Geneva, Switzerland, Sept. 24, 2014, *http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlos-1*.

[8] *See generally* G–20 Statement.

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1312

Protection of Archaeological Resources

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Tennessee Valley Authority (TVA) for the protection of archaeological resources by providing for the issuance of petty offense citations for violations of the Archaeological Resources Protection Act (ARPA) and the Antiquities Act of 1906 (AA). Amending the regulations such that TVA law enforcement agents are authorized to issue citations will help prevent loss and destruction of archaeological resources resulting from unlawful excavations and pillage.

DATES: This final rule becomes effective September 15, 2016.

FOR FURTHER INFORMATION CONTACT: Ralph E. Majors, TVA, 865–632–4176; or Erin E. Pritchard, TVA, 865–632–2463.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

These amendments are promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831–831ee, the Archaeological Resources Protection Act, 16 U.S.C. 470aa–470mm, and the Antiquities Act of 1906, 16 U.S.C.431, 432 & 433.

II. Background for the Amendments

This final rule amends TVA's regulations implementing the Archaeological Resources Protection Act of 1979 (Pub. L. 96–95, as amended by Pub. L. 100–555, Pub. L. 100–588; 93 Stat. 721; 102 Stat. 2983; 16 U.S.C. 470aa–mm) to provide for the issuance of petty offense citations by TVA's law enforcement agents for violations of ARPA or AA.

Section 10(a) of ARPA requires the Departments of Interior, Agriculture and Defense and the Tennessee Valley Authority to promulgate such uniform rules and regulations as may be necessary to carry out the purposes of ARPA. The first purpose of ARPA is "to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands." 16 U.S.C. 470aa(b). The uniform regulations for ARPA originally were published on January 6, 1984 to implement the Act of 1979. The uniform regulations were then revised on January 26, 1995 to incorporate the amendments to ARPA promulgated by Congress in 1988.

Section 10(b) of ARPA requires each Federal land manager (FLM) to promulgate such regulations, consistent with the uniform regulations under Section 10(a), as may be appropriate for the carrying out of the FLM's functions and authorities under the Act. Thus, Section 10(b) allows individual Federal agencies to tailor the uniform regulations to suit their own particular needs with a view to effectively implementing the authorities under the Act. TVA has adopted the uniform regulations as its own. *See* 18 CFR part 1312 (1984 and 1995). This final rule amends TVA's ARPA regulations by enabling TVA's law enforcement agents to issue petty offense citations for violations of ARPA[1] or AA[2] occurring on lands owned by the United States that are entrusted to TVA.[3] The issuance of petty offense citations is consistent with the authority granted to TVA's law enforcement agents under the TVA Act, and advances the effective prosecution of violations of ARPA and AA.

Under the TVA Act, the TVA Board of Directors "may designate employees of the Corporation to act as law enforcement agents" to "make arrests without warrant for any offense against the United States committed in the agent's presence" that occurs "on any lands or facilities owned or leased by the Corporation." *See* 16 U.S.C. 831c–3. Based on this authority, the final rule amends TVA's regulations for protection of archaeological resources to authorize certain TVA law enforcement agents to issue petty offense citations for the violation of any provision of 16 U.S.C. 470ee or 16 U.S.C. 433. Those TVA law enforcement agents that are designated by the Director of TVA Police and Emergency Management for the purpose of conducting archaeological investigations shall have the authority to issue petty offense citations for ARPA or AA violations committed in the agent's presence on lands owned by the United States that are entrusted to TVA. For any such petty offense committed on lands entrusted to TVA, the citation may be issued at the site of the offense, or on non-TVA land (a) when the person committing the offense is in the process of fleeing the site of the offense to avoid arrest, or (b) to protect the archaeological artifacts involved in the commission of the offense.[4] The citation will require the person charged with the violation to appear before a United States Magistrate Judge within whose jurisdiction the affected archaeological resource is located.[5]

III. Comment Period

Public comment was sought for a 30-day period following publication of the proposed amendments in the **Federal Register** on May 20, 2016 (81 FR 31873). The comment period closed on June 20, 2016. No comments were received in response to the publication of the proposed amendments.

The final rule corrects a typographical error in the proposed rule published on May 20, 2016. The reference to "Title 8" in the final sentence of § 1312.22 (on page 31875 of the proposed rule) has been corrected to "Title 18" in this final rule.

IV. Administrative Requirements

A. Unfunded Mandates Reform Act and various Executive Orders including E.O. 12866, Regulatory Planning and Review; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

---

[1] The prohibitions under ARPA are set out in Sections 6(a), 6(b) and 6(c) of the Act. *See* 16 U.S.C. 470ee(a), (b) & (c). Any violation of these prohibitions is subject to the criminal sanctions prescribed in Section 6(d). *See* 16 U.S.C. 470ee(d). TVA's regulations implementing ARPA replicate these prohibitions and criminal sanctions. *See* 18 CFR 1312.4.

[2] The AA prohibits, among other things, the excavation, destruction or appropriation of an object of antiquity situated on federal lands without the permission of the head of the agency having jurisdiction over those lands. *See* 16 U.S.C. 433. Any violation of these provisions is subject to criminal sanctions. *Id.*

[3] Under Section 21(a) of the TVA Act, "[a]ll general penal statutes relating to larceny, embezzlement, conversion, or to the improper handling, retention, use or disposal of . . . property of the United States, shall apply to the . . . property of the Corporation and to . . . *properties of the United States entrusted to the Corporation.*" 16 U.S.C. 831t(a) (emphasis added).

[4] *See* 16 U.S.C. 831c–3(c)(2) (authorizing TVA's law enforcement agents to exercise their law enforcement duties and powers on non-TVA lands (1) when the person to be arrested is in the process of fleeing to avoid arrest or (2) in conjunction with the protection of TVA property.)

[5] Section 3401 of Title 18, United States Code, provides that "any United States magistrate judge shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district." 18 U.S.C. 3401(a).

Populations; E.O. 13045, Protection of Children from Environmental Health Risks; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; and E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, and Use; E.O. 12988, Civil Justice Reform Act.

This final rule amends TVA's regulations for the protection of archaeological resources by providing for issuance of petty offense citations by TVA's law enforcement agents for violations of ARPA or AA. The rule is not subject to Office of Management and Budget Review under Executive Order 12866. The rule contains no Federal mandates for State, local, or tribal government or for the private sector. TVA has determined that these amendments will not have a significant annual effect of $100 million or more or result in expenditures of $100 million in any one year by State, local, or tribal governments or by the private sector. Nor will the amendments have concerns for environmental health or safety risks that may disproportionately affect children, have significant effect on the supply, distribution, or use of energy, or disproportionally impact low-income or minority populations. Accordingly, this final rule has no implications for any of the referenced authorities.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, TVA is required to prepare a regulatory flexibility analysis unless the head of the agency certifies that the proposal will not have a significant economic impact on a substantial number of small entities. TVA's Chief Executive Officer has certified that the amendments promulgated in this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This determination is based on the finding that the amendments are directed toward Federal resource management to help prevent loss or destruction of archaeological resources, with no economic impact on the public.

C. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act.

List of Subjects in 18 CFR Part 1312

Administrative practice and procedure, Historic Preservation, Indians—lands, Penalties, Public Lands, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 18 CFR part 1312 is amended as follows:

PART 1312—PROTECTION OF ARCHAEOLOGICAL RESOURCES: UNIFORM REGULATIONS

■ 1. The authority citation for Part 1312 is revised to read as follows:

Authority: Pub. L. 96–95, 93 Stat. 721, as amended, 102 Stat. 2983 (16 U.S.C. 470aa–mm) (Sec. 10(a) & (b)); 16 U.S.C. 831–831ee (2012). Related Authority: Pub. L. 59–209, 34 Stat. 225 (16 U.S.C. 432, 433); Pub. L. 86–523, 74 Stat. 220, 221 (16 U.S.C. 469), as amended, 88 Stat. 174 (1974); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470a–t), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978), 94 Stat. 2987 (1980); Pub. L. 95–341, 92 Stat. 469 (42 U.S.C. 1996)

■ 2. In § 1312.1, a sentence is added at the end of paragraph (a) to read as follows:

§ 1312.1 Purpose.

(a)* * *. The regulations in this part also enable TVA's law enforcement agents to issue petty offense citations for violations of any provision of 16 U.S.C. 470ee or 16 U.S.C. 433.

* * * * *

■ 3. In § 1312.2, paragraph (c) is added to read as follows:

§ 1312.2 Authority.

* * * * *

(c) Provisions pertaining to the issuance of petty offense citations are based on the duties and powers assigned to TVA's law enforcement agents under 16 U.S.C. 831–831ee.

■ 4. In § 1312.3, paragraph (j) is added to read as follows:

§ 1312.3 Definitions.

* * * * *

(j) *Director* means the Director of TVA Police and Emergency Management assigned the function and responsibility of supervising TVA employees designated as law enforcement agents under 16 U.S.C. 831c–3(a).

■ 5. Section 1312.22 is added to read as follows:

§ 1312.22 Issuance of citations for petty offenses.

Any person who violates any provision contained in 16 U.S.C. 470ee or 16 U.S.C. 433 in the presence of a TVA law enforcement agent may be tried and sentenced in accordance with the provisions of section 3401 of Title 18, United States Code. Law enforcement agents designated by the Director for that purpose shall have the authority to issue a petty offense citation for any such violation, requiring any person charged with the violation to appear before a United States Magistrate Judge within whose jurisdiction the archaeological resource impacted by the violation is located. The term "petty offense" has the same meaning given that term under section 19 of Title 18, United States Code.

Dated: August 8, 2016.

Rebecca C. Tolene,

Deputy General Counsel and Vice President, Natural Resources.

[FR Doc. 2016–19343 Filed 8–15–16; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 11 and 101

[Docket No. FDA–2011–F–0171]

Calorie Labeling of Articles of Food in Vending Machines: Guidance for Industry; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled "Calorie Labeling of Articles of Food in Vending Machines—Small Entity Compliance Guide." The small entity compliance guide (SECG) is intended to help small entities comply with the final rule entitled "Food Labeling; Calorie Labeling of Articles of Food in Vending Machines."

DATES: Submit either electronic or written comments on FDA guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2011–F–0171 for "Calorie Labeling of Articles of Food in Vending Machines—Small Entity Compliance Guide." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Office of Nutrition and Food Labeling, Food Labeling and Standards Staff, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Ashley N. Rulffes, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 1, 2014 (79 FR 71259), we issued a final rule requiring vending machine operators who own or operate 20 or more vending machines, or who voluntarily register to be covered, to provide calorie declarations for those foods sold from vending machines for which the Nutrition Facts label cannot be examined before purchase or for which visible nutrition information is not otherwise provided at the point of purchase (the final rule). Covered vending machine operators must comply with the rule by December 1, 2016. However, in the **Federal Register** of August 1, 2016 (81 FR 50303), we issued a final rule entitled "Food Labeling; Calorie Labeling of Articles of Food in Vending Machines; Extension of Compliance Date." This rule provides that the compliance date for type size front-of-pack labeling requirements (§ 101.8(b)(2) (21 CFR 101.8(b)(2))) and calorie disclosure requirements (§ 101.8(c)(2)) for certain gums, mints, and roll candy products in glass-front machines in the final rule published December 1, 2014 (79 FR 71259) is extended to July 26, 2018. The compliance date for all other requirements in the final rule (79 FR 71259) remains December 1, 2016.

We examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rule will have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to explain the actions that a small entity must take to comply with the rule.

We are issuing the SECG consistent with our good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents our current thinking on calorie labeling for foods sold in vending machines operated by a person engaged in the business of owning or operating 20 or more vending machines, or a person who voluntarily registers with FDA to be covered by the rule. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This SECG refers to collections of information described in FDA's final rule that published in the **Federal Register** of December 1, 2014, and that will be effective on December 1, 2016. As stated in the final rule, these collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information in the final rule have been approved under OMB control number 0910–0782. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

III. Electronic Access

Persons with access to the Internet may obtain the SECG at either *http://www.fda.gov/Food/GuidanceRegulation/*

GuidanceDocumentsRegulatoryInformation/default.htm or *http://www.regulations.gov*. Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: August 11, 2016.

Jeremy Sharp,

Deputy Commissioner for Policy, Planning, Legislation and Analysis.

[FR Doc. 2016–19492 Filed 8–15–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR part 101

[Docket No. FDA–2011–F–0171]

Calorie Labeling of Articles of Food in Vending Machines; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry, entitled "Calorie Labeling of Articles of Food in Vending Machines." The draft guidance, when finalized, will help covered vending machine operators and industry to better understand and comply with the final rule entitled "Food Labeling: Calorie Labeling of Articles of Food in Vending Machines."

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 30, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2011–F–0171 for Calorie Labeling of Articles of Food in Vending Machines; Draft Guidance for Industry. Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to Food Labeling and Standards Staff, Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Felicia B. Billingslea, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled "Calorie Labeling of Articles of Food in Vending Machines." We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of the FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

In the **Federal Register** of December 1, 2014 (79 FR 71259), we issued a final rule entitled "Food Labeling: Calorie Labeling of Articles of Food in Vending Machines" ("the rule"). The rule is codified at 21 CFR 101.8. The rule requires vending machine operators who own or operate 20 or more vending machines, or who voluntarily register with FDA to be covered, to declare calories for those vending machine foods for which the Nutrition Facts label cannot be examined before purchase or for which visible nutrition information is not otherwise provided at the point of purchase. Covered vending machine operators must comply with the rule by December 1, 2016. However, in the **Federal Register** of August 1, 2016 (81 FR 50303), we issued a final rule entitled "Food Labeling; Calorie Labeling of Articles of Food in Vending Machines; Extension of Compliance Date." This rule provides that the compliance date for type size front-of-pack labeling requirements (§ 101.8(b)(2) (21 CFR 101.8(b)(2))) and calorie disclosure requirements (§ 101.8(c)(2)) for certain gums, mints, and roll candy products in glass-front machines in the final rule published December 1, 2014 (79 FR 71259) is extended to July 26, 2018. The compliance date for all other requirements in the final rule (79 FR 71259) remains December 1, 2016.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 101.8 have been approved under OMB Control No. 0910–0782.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*. Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: August 11, 2016.

Jeremy Sharp,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2016–19493 Filed 8–15–16; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0213; FRL–9950–65–Region 7]

Approval and Promulgation of Implementation Plans; State of Iowa; Infrastructure State Implementation Plan (SIP) Requirements for the 1997 and 2006 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), and the Adoption of the 1997 $PM_{2.5}$ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of two State Implementation Plan (SIP) submissions from the State of Iowa for the Infrastructure SIP Requirements for the 1997 and 2006 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). Infrastructure SIPs address the applicable requirements of Clean Air Act (CAA) section 110, which requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action also approves the adoption of the 1997 $PM_{2.5}$ standard.

On September 8, 2011, EPA issued a Finding of Failure to Submit a Complete State Implementation Plan for several states, including Iowa. With respect to Iowa, the Finding of Failure to Submit included the following 2006 $PM_{2.5}$ NAAQS infrastructure requirements: 110(a)(2)(A)–(C), (D)(i)(II) (prong 3 only), (E)–(H) and (J)–(M). This approval of Iowa's infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS addresses the September 8, 2011 finding.

DATES: This final rule is effective on September 15, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2014–0213. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically at *www.regulations.gov* and at EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219. Please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7039, or by email at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. EPA's Response to Comments
III. Final Action
IV. Statutory and Executive Order Reviews

I. What is being addressed in this document?

The EPA is approving two submissions from the State of Iowa: The infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS received on March 31, 2008 and July 29, 2013. The SIP submissions from Iowa addressed the requirements of CAA sections 110(a)(1) and (2) as applicable to the 1997 and 2006 $PM_{2.5}$ NAAQS. The March 31, 2008 SIP submission also included the state adoption of the 1997 $PM_{2.5}$ standard. The EPA is also approving the 1997 $PM_{2.5}$ standard in today's action.

For the 1997 $PM_{2.5}$ NAAQS, the EPA took previous action to address section 110(a)(2)(D)(i)(I)—prongs 1 and 2 for Iowa. (72 FR 10380, March 8, 2007, as revised in 76 FR 48208, August 8, 2011). Therefore, in this final action, we are not acting on these portions since they have already been acted upon by the EPA.

A Technical Support Document is included as part of the docket to discuss the details of this final action.

II. EPA's Response to Comment

The public comment period on EPA's proposed regulation opened June 23, 2016, the date of its publication in the **Federal Register**, and closed on July 25, 2016. 81 FR 40825. During this period, EPA received one comment that is addressed as follows:

Comment: The commenter stated that EPA must disapprove the Prevention of Significant Deterioration (PSD) portions of the infrastructure SIP, 110(a)(2)(C), (D)(i)(II) (prong 3) and (J), because the local air agencies in Iowa with their own PSD programs lack the $PM_{2.5}$ increment or do not treat NO_X as a precursor for ozone.

Response to comment: Iowa has a delegated PSD program (see 72 FR 27056) that is not delegated to local air agencies. PSD permits are only issued by the Iowa Department of Natural Resources. 81 FR 44795, 44796. Therefore, no changes will be made in response to this comment.

III. What action is EPA taking?

The EPA is approving two submissions from the State of Iowa: The infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS received on March 31, 2008 and July 29, 2013. The SIP submissions from Iowa address the requirements of CAA sections 110(a)(1) and (2) as applicable to the 1997 and 2006 $PM_{2.5}$ NAAQS. Today's action also approves the adoption of the 1997 $PM_{2.5}$ standard.

The EPA's analysis of these submissions is addressed in a TSD as part of the docket.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 17, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Prevention of significant deterioration, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 1, 2016.

Mike Brincks,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA to amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

■ 2. Section 52.820 is amended by adding (e)(45) and (46) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY SIP PROVISIONS

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Explanation
*	*	*	*	* * *
(45) Sections 110(a)(1) and (2) Infrastructure Requirements 1997 $PM_{2.5}$ NAAQS.	Statewide	3/21/08	8/16/16 [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), prong 3, (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(I) is not applicable.
(46) Sections 110(a)(1) and (2) Infrastructure Requirements 2006 $PM_{2.5}$ NAAQS.	Statewide	7/23/13	8/16/16 [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), prong 3, (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(I) is not applicable.

[FR Doc. 2016–19386 Filed 8–15–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0350; FRL–9950–73–Region 3]

Air Plan Approval; DC; Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the District of Columbia (the District) state implementation plan (SIP). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the Clean Air Act (CAA) requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The District has made a submittal addressing the infrastructure requirements for the 2012 annual fine particulate matter ($PM_{2.5}$) NAAQS. EPA is approving these revisions addressing the infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS in accordance with the requirements of the CAA.

DATES: This rule is effective on October 17, 2016 without further notice, unless EPA receives adverse written comment by September 15, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0350 at *http://www.regulations.gov,* or via email to *Fernandez.cristina@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On December 28, 2015, the District submitted a formal SIP revision to its SIP. The District's SIP revision submittal addresses the following infrastructure elements for the implementation of the 2012 annual $PM_{2.5}$ NAAQS: section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. The infrastructure SIP submittal does not address section 110(a)(2)(I) which pertains to the nonattainment requirements of part D, title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process.

II. Summary of EPA's Rationale for Proposing Approval

In accordance with 40 CFR part 51, appendix V, EPA found that the District's December 28, 2015 infrastructure SIP submittal is technically incomplete for the portions addressing the infrastructure elements in section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) relating to the permitting program for prevention of significant deterioration (PSD), because the District has not adequately addressed the requirements of part C of title I of the CAA for having a SIP approved PSD permit program. EPA found the remainder of the SIP submittal to be administratively and technically complete. On May 11, 2016, EPA sent a letter to the District Department of Environment and Energy (DDOEE) notifying the District of this determination.

As a result of this incompleteness finding, EPA is not taking rulemaking action on the PSD related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the 2012 annual $PM_{2.5}$ NAAQS, until the District through DDOEE submits a SIP to address the PSD permit program requirements of part C of title I of the CAA. EPA recognizes, however, that the District is already subject to a Federal Implementation Plan (FIP) containing the federal PSD program to correct the SIP deficiency and that DDOEE would not have to take further action for the FIP based permitting process to continue operating, as incorporated by reference in the District SIP in 40 CFR 52.499.[1] EPA's PSD FIP for the District consists of the implementation of the federal PSD provisions as codified in 40 CFR 51.21, with the exception of paragraph (a)(1).

EPA does not anticipate any adverse consequences to DDOEE as a result of this incompleteness finding for the PSD related portions of section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the District's 2012 annual $PM_{2.5}$ infrastructure SIP revision. First, mandatory sanctions would not apply to the District under CAA section 179 because the failure to submit a PSD SIP is neither required under title I part D of the CAA, nor in response to a SIP call under section 110(k)(5) of the CAA. Second, EPA is not subject to any further FIP duty from our finding of incompleteness because of the PSD FIP that is already been approved, which addresses the SIP deficiency.

EPA finds that the remainder of the District's December 28, 2015 infrastructure submittal provides the basic program elements specified in section 110(a)(2) of the CAA necessary to implement, maintain, and enforce the 2012 annual $PM_{2.5}$ NAAQS. A detailed summary of EPA's review and rationale for approving the District's infrastructure SIP submittal for the 2012 annual $PM_{2.5}$ NAAQS may be found in the technical support document (TSD) for this rulemaking action which is available on line at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2016–0350.

III. Final Action

EPA is approving the District's December 28, 2015 infrastructure submittal for the 2012 annual $PM_{2.5}$ NAAQS as meeting the requirements of section 110(a)(2) of the CAA, including specifically section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for this NAAQS, with the exception of the requirements related to the PSD permitting program of part C, title I of the CAA in section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J). This rulemaking does not include action on section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process where necessary and applicable. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 17, 2016 without further notice unless EPA receives adverse comment by September 15, 2016. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *October 17, 2016.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2012 annual $PM_{2.5}$ NAAQS for the District may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

---

[1] On August 7, 1980 (45 FR 52676, at 52741), EPA disapproved a number of states SIPs for PSD purposes, including the District of Columbia, and incorporated by reference portions of the federal PSD provisions in 40 CFR 52.21 into the implementation plans for those states. This FIP was subsequently amended to reflect amendments to the federal PSD rule, on March 10, 2003 (68 FR 11316, at 11322) and December 24, 2003 (68 FR 74483, at 74488). The PSD FIP is incorporated by reference in the District SIP in 40 CFR 52.499.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 4, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

In § 52.470, the table in paragraph (e) is amended by adding an entry for Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA Approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	District of Columbia	12/28/15	8/16/16, [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I), D(i)(II), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.
*	*	*	*	*

[FR Doc. 2016–19390 Filed 8–15–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0210; FRL–9950–71–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Case-by-Case Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Virginia's state implementation plan (SIP). The SIP revision includes revised Virginia regulations which incorporate compliance dates necessary for implementing planning requirements for the 2008 8-hour ozone national ambient air quality standard (NAAQS). Specifically, the SIP revision includes revised Virginia regulations which added notification and compliance dates for sources seeking case-by-case reasonably available control technology (RACT) determinations required under the 2008 8-hour ozone NAAQS. EPA is approving this revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 17, 2016 without further notice, unless EPA receives adverse written comment by September 15, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0210 at *http://www.regulations.gov,* or via email to *fernandez.cristina@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Leslie Jones Doherty, (215) 814–3409, or by email at *jones.leslie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 5, 2016, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), submitted a formal revision to the Virginia SIP. The SIP revision submittal includes revised provisions within 9VAC5 Chapter 40, Existing Stationary Sources, to include revised notification and compliance dates for sources subject to RACT for the 2008 8-hour ozone NAAQS to submit a case-by-case RACT demonstration to VADEQ.

On March 27, 2008, EPA revised the 8-hour ozone standard to a new 0.075

parts per million (ppm) level (73 FR 16436). On May 21, 2012, EPA finalized designations for the 2008 8-hour ozone NAAQS (77 FR 30087) in which the Washington, DC–MD–VA area was designated marginal nonattainment. *See* 40 CFR 81.347. The northern portion of Virginia is also part of the Metropolitan Statistical Area of the District Columbia which is in the ozone transport region (OTR) established under section 184(a) of the CAA. Pursuant to section 184(b) of the CAA, all areas in the OTR must comply with the CAA requirements for a moderate nonattainment area which includes RACT requirements. On March 6, 2015, EPA published a final implementation rule (80 FR 12264) which specifies the compliance date (January 1, 2017) by which RACT measures must be implemented for the 2008 8-hour ozone NAAQS. *See* 40 CFR 51.1112. Thus, the northern portion of Virginia which is within the OTR must implement RACT per CAA sections 172 and 182 for major stationary sources of nitrogen oxides (NO_X) and volatile organic compounds (VOCs).[1]

II. Summary of SIP Revision

This SIP revision includes revised 9VAC5–40–7400 and 9VAC5–40–7420 which incorporate EPA's compliance date for implementation of RACT requirements for the 2008 8-hour ozone NAAQS (*i.e.*, January 1, 2017) into VADEQ's regulations. The SIP revision consists of amended versions of 9VAC5–40–7400 and 9VAC5–40–7420, which were previously included in the Virginia SIP, to add notification and compliance dates for RACT case-by-case determinations to meet CAA deadlines for implementing RACT for major stationary sources of NO_X and VOC within Virginia for the 2008 8-hour ozone NAAQS. These provisions now include the RACT compliance date stated in EPA's implementation rule for the 2008 8-hour ozone NAAQS. The notification date included in the Virginia regulations is the date by which facilities subject to RACT for the 2008 ozone NAAQS must notify the State Air Pollution Control Board of their applicability status, commit to making a RACT determination, and provide an acceptable schedule for implementing the proposed RACT determination so the source achieves compliance with the RACT emission standard as expeditiously as possible, but no later than the compliance date of January 1, 2017 as required by CAA.

Specifically, in section 9VAC5–40–7400, pertaining to stationary sources of VOCs, Table 4–51B was amended to add the 2008 8-hour ozone standard, emissions control area, source threshold limit in tpy which subjects sources to VOC RACT, date for submission of notification to VADEQ, and the compliance date to implement RACT. Table 1, in this rulemaking action, describes Table 4–51B, Notification and Compliance Dates for Facilities Located in VOC Emissions Control Areas.

TABLE 1—NOTIFICATION AND COMPLIANCE DATES FOR FACILITIES LOCATED IN VOC EMISSIONS CONTROL AREAS

Standard	Emissions control area	Source threshold	Notification date	Compliance date
1997 (0.08 ppm)	Northern Virginia	≥50 tpy	March 1, 2007	April 1, 2009.
2008 (0.075 ppm)	Northern Virginia	≥50 tpy	February 1, 2016	January 1, 2017.

In section 9VAC5–40–7420, pertaining to stationary sources of NO_X, Table 4–51E and Table 4–51F were amended to include the 2008 8-hour ozone standard, emissions control area, source threshold limit in tpy which subjects sources to NO_X RACT, date for submission of notification to VADEQ, and compliance date to implement RACT. Table 2, of this rulemaking action, describes Table 4–51E for facilities in an emission control area where there is no applicable presumptive RACT. Table 3, of this rulemaking action describes Table 4–51F which pertains to facilities in an emission control area where presumptive RACT is defined or applicable.

TABLE 2—NOTIFICATION AND COMPLIANCE DATES FOR FACILITIES LOCATED IN NO_X EMISSIONS CONTROL AREAS FOR WHICH THERE IS NO PRESUMPTIVE RACT

Standard	Emissions control area	Source threshold	Notification date	Compliance date
1997 (0.08 ppm)	Northern Virginia	≥100 tpy	March 1, 2007	April 1, 2009
2008 (0.075 ppm)	Northern Virginia	≥100 tpy	February 1, 2016	January 1, 2017

TABLE 3—NOTIFICATION AND COMPLIANCE DATES FOR FACILITIES LOCATED IN NO_X EMISSIONS CONTROL AREAS FOR WHICH PRESUMPTIVE RACT IS DEFINED

Standard	Emissions control area	Source threshold	Notification date	Compliance date
1997 (0.08 ppm)	Northern Virginia	≥100 tpy	March 1, 2007	April 1, 2009
2008 (0.075 ppm)	Northern Virginia	≥100 tpy	February 1, 2016	January 1, 2017

The amendments to 9VAC5–40–7400 and 9VAC5–40–7420 are consistent with the federal requirements for RACT implementation for the 2008 8-hour ozone NAAQS contained within EPA's final implementation rule for this NAAQS and with CAA requirements for RACT in CAA sections 172, 182, and 184. *See* 80 FR 12264.

III. Final Action

EPA is approving the February 5, 2016 SIP submission from Virginia which includes amended Virginia regulations to include notification and compliance dates for the submission and implementation of case-by-case RACT to address requirements for the 2008 8-hour NAAQS. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on *October 17, 2016* without further notice unless EPA receives adverse comment by *September 15, 2016*. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

---

[1] Any stationary source which emits or has the potential to emit at least 50 tons per year (tpy) of VOCs or 100 tpy of NO_X shall be considered a major stationary source subject to attainment planning requirements, including RACT, as if the area were a moderate nonattainment area. *See* CAA sections 182(b) and (f), 184(b), and 302.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code § 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval." Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this rulemaking action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of VADEQ regulations described in the amendments to 40 CFR 52 set forth below which added notification and compliance dates for sources seeking case-by-case RACT. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or may be viewed at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 17, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action pertaining to submission and compliance dates for case-by-case RACT determinations in Virginia for the 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 2, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Sections 5–40–7400 and 5–40–7420 under 9VAC5, Chapter 40, Part 2, Article 51 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * * * * * *				
9 VAC 5, Chapter 40 Existing Stationary Sources (Part IV)				
* * * * * * *				
Part 2 Emissions Standards				
* * * * * * *				
Article 51 Stationary Sources Subject to Case-by-Case Control Technology Determinations (Rule 4–51)				
* * * * * * *				
5–40–7400	Standard for volatile organic compounds (eight-hour ozone standard).	12/02/2015	8/16/2016 [*Insert* ***Federal Register*** *Citation*].	Notification and compliance dates added
* * * * * * *				
5–40–7420	Standard for nitrogen oxides (eight-hour ozone standard).	12/02/2015	8/16/2016 [*Insert* ***Federal Register*** *Citation*].	Notification and compliance dates added
* * * * * * *				

* * * * *

[FR Doc. 2016–19388 Filed 8–15–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0652; FRL–9949–21]

Flumioxazin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flumioxazin in or on soybean forage and hay. Valent U.S.A. Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 16, 2016. Objections and requests for hearings must be received on or before October 17, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0652, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0652 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 17, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0652, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 25, 2016 (81 FR 24046) (FRL–9944–86), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F8353) by Valent USA Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596 U.S.A. The petition requested that 40 CFR 180.180.568 be amended by establishing tolerances for residues of the herbicide flumioxazin, in or on soybean forage at 0.05 parts per million (ppm) and hay at 0.02 ppm. That document referenced a summary of the petition prepared by Valent USA Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that the tolerance for soybean forage should be lowered from the proposed level of 0.05 ppm to 0.03 ppm. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for flumioxazin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with flumioxazin follows.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In the **Federal Register** of April 05, 2013 (78 FR 20462) (FRL–9381–7), EPA published a final rule establishing tolerances for residues of flumioxazin on globe artichoke, chinese cabbage, olive, pomegranate, and prickly pear cactus commodities based on EPA's conclusion that aggregate exposure to flumioxazin is safe for the general population, including infants and children. Since that rulemaking, the toxicity profile for flumioxazin has not changed. The requested tolerances will not result in residues on human food commodities, only animal feed (soybean forage and hay). The available residue data submitted for use in soybean forage and hay indicates that the dietary burden for livestock will not change from the current levels that were previously assessed. Therefore, the residues of flumioxazin soybean forage and hay from the proposed new use will not impact the existing human dietary and aggregate risk assessments for flumioxazin. For a detailed discussion of the aggregate risk assessments and determination of safety, as well as a summary of the toxicological endpoints used for human risk assessment, please refer to the final rule published in the **Federal Register** of April 05, 2013. EPA relies upon those supporting risk assessments and the findings made in the **Federal Register** document in support of this final rule.

Based on the risk assessments and information described above, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to flumioxazin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/nitrogen-phosphorus detection (GC/NPD) method, Valent Method RM30–A–1) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for flumioxazin.

C. Revisions to Petitioned-For Tolerances

The agency has determined that the tolerance for soybean forage should be lowered from the proposed level of 0.05 ppm to 0.03 ppm. The modifications were due to the Agency's use of the Organization for Economic Co-operation and Development (OECD) calculation procedures to determine the appropriate tolerance levels.

V. Conclusion

Therefore, tolerances are established for residues of flumioxazin, in or on soybean forage at 0.03 parts per million (ppm) and hay at 0.02 (ppm).

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 5, 2016.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.568, add alphabetically the commodities "Soybean forage" and "Soybean hay" to the table in paragraph (a) to read as follows:

§ 180.568 Flumioxazin; tolerance for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Soybean forage	0.03
Soybean hay	0.02
* * * * *	

* * * * *

[FR Doc. 2016–19553 Filed 8–15–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192 and 195

[Docket No. PHMSA–2016–0075]

Pipeline Safety: Clarification of Terms Relating to Pipeline Operational Status

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing this advisory bulletin to all owners and operators (operators) of hazardous liquid, carbon dioxide, and gas pipelines, as defined in 49 Code of Federal Regulations Parts 192 and 195, to clarify the regulatory requirements that may vary depending on the operational status of a pipeline. Further, this advisory bulletin identifies regulatory requirements operators must follow for the abandonment of pipelines. Pipeline owners and operators should verify their operations and procedures align with the regulatory intent of defined terms as described under this bulletin. Congress recognized the need for this clarification in its Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016.

DATES: August 16, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Daugherty at 816–329–3800 or by email to *Linda.Daugherty@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 17, 2014, a hazardous liquid pipeline company was notified by emergency responders of crude oil leaking up from below the pavement in a residential area in Wilmington, California. The leak was close to a refinery. The company initially informed the regulator that it had no active lines in the area but responded anyway.

On March 18, 2014, the company excavated the area surrounding the leaking oil and learned that the leak originated from a pipeline that it owned. The pipeline had been purchased 16 years ago and the company understood that the previous operator had properly abandoned and purged the pipeline prior to purchase. Regulators determined the pipeline leaked due to an internal "pinhole" corrosion leak on a weld.

Subsequent investigations determined that while the pipeline was not in operation, its valves were positioned to prevent flow but the pipeline had never been purged and cleaned. Some regulators and industry representatives informally referred to such pipelines as "idled."

On May 31, 2015, a 24-inch natural gas "auxiliary" pipeline crossing the Arkansas River in North Little Rock, Arkansas, failed due to vortex-induced vibration after high water levels eroded the ground cover and exposed the pipeline to the river's flow. The failure released 3,858 cubic feet of natural gas into the atmosphere and resulted in the temporary closure of the Arkansas River to vessel traffic for five days. The pipeline at the time of the failure was isolated by two mainline valves, at an approximate pressure of 700 pounds per square inch (psig). The pipeline, considered an emergency back-up pipeline crossing the river, has not been fully operated since 1972. However, the company did maintain the pipeline as an active pipeline, subject to in-line inspection, cathodic protection, and other maintenance requirements.

On October 28, 2015, Cypress, California, city public works employees identified an oil-water mixture on a local road. Approximately 28 barrels of oil-water mixture was determined to have leaked from an oil pipeline that was believed to have been purged of oil prior to deactivation in 1997. The owner of the pipeline had purchased it from another company just prior to the failure.

Congress recognized the need for PHMSA to provide clarification of operational terms and ensure all operators are aware of and abide by the regulatory requirements for properly abandoning pipelines. In its "Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016," Congress required PHMSA to issue an advisory bulletin to owners and operators of gas or hazardous liquid pipeline facilities and Federal and State pipeline safety personnel regarding procedures required to change the status of a pipeline facility from active to abandoned, including specific guidance on the terms recognized by the Secretary for each pipeline status referred to in such advisory bulletin.

PHMSA regulations do not recognize an "idle" status for hazardous liquid or gas pipelines. The regulations consider pipelines to be either active and fully subject to all relevant parts of the safety regulations or abandoned. The process and requirements for pipeline abandonment are captured in §§ 192.727 and 195.402(c)(10) for gas and hazardous liquid pipelines, respectively. These requirements include purging all combustibles and sealing any facilities left in place. The last owner or operator of abandoned offshore facilities and abandoned onshore facilities that cross over, under, or through commercially navigable waterways must file a report with PHMSA. PHMSA regulations define the term "abandoned" to mean permanently removed from service (§ 192.3).

A 1998 report by the Research and Special Programs Administration (RSPA), a predecessor agency to PHMSA, titled: "Analysis of Pipeline Burial Surveys in the Gulf of Mexico," stated: "Abandonment involves the permanent and, for all practical purposes, irreversible process of discontinuing the use of a pipeline. The physical asset is abandoned in the truest sense of the word; no future use or value is attributed to it, and no attempts are made to maintain serviceability. Pipeline systems or segments that are not abandoned, but only idled, decommissioned, or mothballed, are considered to have the potential for reuse at some point in the future. The maintenance and inspection to be performed in these cases is a function of the probability of reuse, the cost and difficulty of remediation which may be required, and the potential impact of the in-place and idled facility on human safety and the environment."

PHMSA is aware that some pipelines may have been abandoned prior to the effective date of the abandonment regulations. Companies may not have access to records relating to where these pipelines are located or whether they were properly purged of combustibles and sealed. Owners and operators have a responsibility to assure facilities for which they are responsible or last owned do not present a hazard to people, property or the environment.

In the case study from Wilmington, California, provided above, the pipeline company was aware of the pipeline and believed it to have been properly abandoned by the previous owner/operator. The pipeline company was cited and fined by a State regulator because it did not properly maintain the active line or, alternatively, properly abandon the pipeline facility.

Pipelines not currently in operation but that may be used in the future are sometimes informally referred to as "idled," "inactive," or "decommissioned." These pipelines may be shut down and still contain hazardous liquids or gas. Usually, the mainline valves on these pipelines are closed, isolating them from other pipeline segments. Frequently, blind flanges or welded end caps are used for further isolation. Some pipelines do not operate for short periods of time such as weeks or months. Other pipelines do not operate for years. If a pipeline is not properly abandoned and may be used for the future for transportation of hazardous liquid or gas, PHMSA regulations consider it an active pipeline. Owners and operators of pipelines that are not operating but contain hazardous liquids and gas must comply with all relevant safety requirements, including periodic maintenance, integrity management assessments, damage prevention programs, and public awareness programs.

PHMSA is aware that some owners and operators may properly purge a pipeline of combustibles without abandonment because of an expectation to later continue using the pipeline in hazardous materials transportation. A purged pipeline presents different risks, and different regulatory treatment may be appropriate. Degradation of such a pipeline can occur, but it is not likely to result in significant safety impacts to people, property, or the environment. PHMSA will accept deferral of certain activities for purged but active pipelines. These deferred activities might include actions impractical on most purged pipelines such as in-line inspection. PHMSA is considering proposing procedures in a future rulemaking that would address methods owners or operators could use to notify regulators of purged but active pipelines. In the interim, owners or operators planning to defer certain activities for purged pipelines should coordinate the deferral in advance with regulators. All deferred activities must be completed prior to, or as part, of any later return-to-service. Pipeline owners and operators are fully responsible for the safety of their pipeline facilities at all times and during all operational statuses.

II. Advisory Bulletin (ADB–2016–05)

To: Owners and Operators of Hazardous Liquid, Carbon Dioxide and Gas Pipelines.

Subject: Clarification of Terms Relating to Pipeline Operational Status.

Advisory: PHMSA regulations do not recognize an "idle" status for a hazardous liquid or gas pipelines. The regulations consider pipelines to be either active and fully subject to all parts of the safety regulations or abandoned. The process and requirements for pipeline abandonment are captured in §§ 192.727 and 195.402(c)(10) for gas and hazardous liquid pipelines, respectively. Pipelines abandoned after the effective date of the regulations must comply with requirements to purge all combustibles and seal any facilities left in place. The last owner or operator of abandoned offshore facilities and abandoned onshore facilities that cross over, under, or through commercially navigable waterways must file a report with PHMSA. PHMSA regulations define the term "abandoned" to mean permanently removed from service.

Companies that own pipelines abandoned prior to the effective date of the abandonment regulations may not have access to records relating to where these pipelines are located or whether they were properly purged of combustibles and sealed. To the extent feasible, owners and operators have a responsibility to assure facilities for which they are responsible or last owned do not present a hazard to people, property or the environment.

Pipelines not currently in operation are sometimes informally referred to as "idled," "inactive," or "decommissioned." These pipelines may be shut down and still contain hazardous liquids or gas. Usually, the mainline valves on these pipelines are closed, isolating them from other pipeline segments. If a pipeline is not properly abandoned and may be used in the future for transportation of hazardous liquid or gas, PHMSA regulations consider it as an active pipeline. Owners and operators of pipelines that are not operating but contain hazardous liquids and gas must comply with all applicable safety requirements, including periodic maintenance, integrity management assessments, damage prevention programs, response planning, and public awareness programs.

PHMSA is aware that some owners and operators may properly purge a pipeline of combustibles with the expectation to later use that pipeline in hazardous materials transportation. A purged pipeline presents different risks, and therefore different regulatory treatment may be appropriate. Degradation of such a pipeline can occur, but is not likely to result in significant safety impacts to people, property, or the environment. PHMSA will accept deferral of certain activities for purged but active pipelines. These deferred activities might include actions impractical on most purged pipelines, such as in-line inspection. PHMSA is considering proposing procedures in a future rulemaking that would address methods owners or operators could use to notify regulators of purged but active pipelines. In the interim, owners or operators planning to defer certain activities for purged pipelines should coordinate the deferral in advance with regulators. All deferred activities must be completed prior to, or as part of, any later return-to-service. Pipeline owners and operators are fully responsible for the safety of their pipeline facilities at all times and during all operational statuses.

Issued in Washington, DC, on August 11, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 2016–19494 Filed 8–15–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2015–0034; FF09M21200–167–FXMB1231099BPP0]

RIN 1018–BA70

Migratory Bird Hunting; Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a final rule in the **Federal Register** on July 25, 2016, that prescribes the hunting seasons, hours, areas, and daily bag and possession limits for migratory game birds during the 2016–17 season. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. In that final rule, we identified several errors concerning season dates, and bag and possession limits, for certain States, as well as a number of formatting and other errors in tables and table notes. With this document, we correct those errors.

DATES: This correction is effective August 16, 2016.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** on July 25, 2016, at 81 FR 48648, the following corrections are made:

■ 1. On page 48652, § 20.103(a) is amended by revising the entry for *Pennsylvania* under the heading EASTERN MANAGEMENT UNIT in the table to read as follows:

§ 20.103 Seasons, limits, and shooting hours for doves and pigeons.

* * * * *

(a) * * *

	Season dates	Limits	
		Bag	Possession
EASTERN MANAGEMENT UNIT			
Pennsylvania			
12 noon to sunset	Sept. 1–Sept. 24	15	45
1/2 hour before sunrise to sunset	Sept. 26–Oct. 8 &	15	45
	Oct. 15–Nov. 26 &	15	45
	Dec. 26–Jan. 3	15	45

* * * * *

■ 2. On page 48656, § 20.104 is amended by revising table note (14) to read as follows:

§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and snipe.

* * * * *

(14) In *Iowa,* the limits for sora and Virginia rails are 12 daily and 36 in possession.

* * * * *

■ 3. Section 20.105 is amended as follows:

■ a. On page 48657, in paragraph (c), by revising the entry for *Iowa* under the heading *MISSISSIPPI FLYWAY* in the table;

■ b. On page 48659, in paragraph (d), by revising table note (11);

■ c. In paragraph (e):

■ i. On pages 48660 through 48665, under the heading ATLANTIC FLYWAY, by revising the entries for *Georgia, Maine, New Jersey,* and *Rhode Island* in the table; by adding an entry for *South Carolina* in the table; and by revising table note (14);

■ ii. On pages 48668 through 48670, under the heading MISSISSIPPI FLYWAY, by revising the entries for *Minnesota* and *Tennessee* in the table, and by removing and reserving table note (6); and

■ iii. On page 48670, under the heading CENTRAL FLYWAY, in the introductory text under the heading "*Duck Limits*", by removing the words "1 mottled duck,"; and

■ d. In paragraph (f), in the table:

■ i. On page 48678, under the heading *MISSISSIPPI FLYWAY,* by revising the entry for *Iowa;* and

■ ii. On page 48679, under the heading *CENTRAL FLYWAY,* by revising the entry for *Kansas.*

The revisions read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

* * * * *

(c) * * *

	Season dates	Limits	
		Bag	Possession
* * *	* *	*	*
MISSISSIPPI FLYWAY			
* * *	* *	*	*
Iowa (3):			
North Zone	Sept. 3–Sept. 11	6	18

	Season dates	Limits	
		Bag	Possession
South Zone	Sept. 3–Sept. 11	6	18
Missouri River Zone	Sept. 3–Sept. 18	6	18
*	*	*	*

* * * * *

(d) * * *

* * * * *

(11) In *Virginia,* shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 16, and one-half hour before sunrise to sunset from September 17 to September 25 in the area east of I–95 where the September teal season is open. Shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 21, and one-half hour before sunrise to sunset from September 22 to September 25 in the area west of I–95.

* * * * *

(e) * * *

ATLANTIC FLYWAY

* * * * *

	Season dates	Limits	
		Bag	Possession
*	*	*	*
Georgia			
Ducks	Nov. 19–Nov. 27 &	6	18
	Dec. 10–Jan. 29	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Oct. 8–Oct. 23 &	5	15
	Nov. 19–Nov. 27 &	5	15
	Dec. 10–Jan. 29	5	15
Light Geese	Same as for Canada Geese	5	15
Brant	Closed		
Maine			
Ducks (2):		6	18
North Zone	Sept. 26–Dec. 3		
South Zone	Oct. 1–Oct. 15 &		
	Nov. 1–Dec. 24		
Coastal Zone	Oct. 1–Oct. 15 &		
	Nov. 11–Jan. 4		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	5	15
Canada Geese:.			
North Zone	Oct. 1–Dec. 21	3	9
South Zone	Oct. 1–Oct. 27 &	3	9
	Nov. 1–Dec. 24	3	9
Coastal Zone	Oct. 1–Oct. 27 &	3	9
	Nov. 11–Jan. 4	3	9
Light Geese	Oct. 1–Jan. 31	25	
Brant:			
North Zone	Sept. 26–Dec. 3	2	6
South Zone	Oct. 1–Oct. 15 &	2	6
	Nov. 1–Dec. 24	2	6
Coastal Zone	Oct. 1–Oct. 15 &	2	6
	Nov. 11–Jan. 4	2	6
*	*	*	*
New Jersey			
Ducks:		6	18
North Zone	Oct. 8–Oct. 15 &		
	Nov. 5–Jan. 5		
South Zone	Oct. 22–Oct. 29 &		
	Nov. 12–Jan. 12		
Coastal Zone	Nov. 10–Nov. 12 &		
	Nov. 24–Jan. 28		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese:.			
North Zone	Nov. 12–Nov. 26 &	3	9
	Dec. 10–Jan. 21	3	9
South Zone	Nov. 12–Nov. 26 &	3	9
	Dec. 10–Jan. 21	3	9
Coastal Zone	Nov. 10–Nov. 12 &	5	15
	Nov. 24–Feb. 15	5	15

	Season dates	Limits	
		Bag	Possession
Special Season Zone	Jan. 23–Feb. 15	5	15
Light Geese:			
North Zone	Oct. 17–Feb. 15	25	
South Zone	Oct. 17–Feb. 15	25	
Coastal Zone	Oct. 17–Feb. 15	25	
Brant:			
North Zone	Oct. 8–Oct. 15 &	1	3
	Nov. 5–Jan. 5	1	3
South Zone	Oct. 22–Oct. 29 &	1	3
	Nov. 12–Jan. 12	1	3
Coastal Zone	Nov. 10–Nov. 12 &	1	3
	Nov. 24–Jan. 28	1	3

* * * * * * *

	Season dates	Limits	
		Bag	Possession
Rhode Island			
Ducks	Oct. 7–Oct. 10 &	6	18
	Nov. 23–Nov. 27 &	6	18
	Dec. 3–Jan. 22	6	18
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese	Nov. 19–Nov. 27 &	3	9
	Dec. 3–Jan. 30	3	9
Special season	Feb. 4–Feb. 10	5	15
Light Geese	Oct. 16–Jan. 30	25	
Brant	Dec. 4–Jan. 22	2	6
South Carolina			
Ducks (9)(10)	Nov. 12 &	6	18
	Nov. 19–Nov. 26 &	6	18
	Dec. 10–Jan. 29	6	18
Mergansers (11)	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada and White-fronted Geese (12)	Nov. 19–Nov. 26 &	5	15
	Dec. 10–Jan. 29 &	5	15
	Feb. 12–Feb. 27	5	15
Light Geese	Nov. 19–Nov. 26 &	25	
	Dec. 10–Jan. 29 &	25	
	Feb. 12–Feb. 27	25	
Brant	Nov. 19–Nov. 26 &	2	6
	Dec. 10–Jan. 29	2	6

* * * * * * *

* * * * *

(14) In *West Virginia,* the season is closed for eiders, whistling ducks, and mottled ducks.

* * * * *

MISSISSIPPI FLYWAY

* * * * *

	Season dates	Limits	
		Bag	Possession

* * * * * * *

	Season dates	Limits	
		Bag	Possession
Minnesota			
Ducks:	6	18	
North Zone	Sept. 24–Nov. 22.		
Central Zone	Sept. 24–Oct. 2 &. Oct. 8–Nov. 27.		
South Zone	Sept. 24–Oct. 2 & Oct. 15–Dec. 4.		
Mergansers	Same as for Ducks	5	15
Coots (5)	Same as for Ducks	15	45
Dark Geese (1):.			
North Zone	Sept. 3–Sept. 18 &	5	15
	Sept. 24–Dec. 23	3	9
Central Zone	Sept. 3–Sept. 18 &	5	15
	Sept. 24–Oct. 2 &	3	9
	Oct. 8–Dec. 28	3	9
South Zone	Sept. 3–Sept. 18 &	5	15
	Sept. 24–Oct. 2 &	3	9

	Season dates	Limits	
		Bag	Possession
	Oct. 15–Jan. 4	3	9
Light Geese:.			
North Zone	Same as for Dark Geese	20	60
Central Zone	Same as for Dark Geese	20	60
South Zone	Same as for Dark Geese	20	60
* * *	* *	*	*
Tennessee			
Ducks:		6	18
Reelfoot Zone	Nov. 12–Nov. 13 &. Dec. 3–Jan. 29.		
Rest of State	Nov. 26–Nov. 27 &. Dec. 3–Jan. 29.		
Mergansers	Same as for Ducks	5	15
Coots	Same as for Ducks	15	45
Canada Geese:.			
Northwest Zone	Sept. 1–Sept. 15 &	5	15
	Oct. 8–Oct. 12 &	5	15
	Nov. 12–Nov. 13 &	5	15
	Dec. 3–Feb. 11	5	15
Rest of State	Sept. 1–Sept. 15 &	5	15
	Oct. 8–Oct. 25 &	5	15
	Nov. 26–Nov. 27 &	5	15
	Dec. 3–Jan. 29	5	15
White-fronted Geese:.			
Northwest Zone	Nov. 26–Nov. 27 &	2	6
	Dec. 3–Feb. 11	2	6
Rest of State	Same as Northwest Zone	2	6
Brant:.			
Northwest Zone	Nov. 26–Nov. 27 &	2	6
	Dec. 3–Jan. 29	2	6
Rest of State	Same as Northwest Zone	2	6
Light Geese	Same as White-fronted Geese	20	
* * *	* *	*	*

* * * * * (f) * * *

	Season dates
* * * * *	* *
MISSISSIPPI FLYWAY	
* * * * *	* *
Iowa	
Ducks, mergansers, coots	
North Zone	Sept. 17 & 18.
Missouri River Zone	Oct. 1 & 2.
South Zone	Sept. 24 & 25.
* * * * *	* *
CENTRAL FLYWAY	
* * * * *	* *
Kansas (7)	
Ducks, geese, mergansers, and coots:	
High Plains	Oct. 1 & 2.
Low Plains:	
Early Zone	Oct. 1 & 2.
Late Zone	Oct. 22 & 23.
Southeast Zone	Nov. 5 & 6.
* * * * *	* *

* * * * *

■ 4. Amend § 20.109 by:

■ a. On page 48682, revising the entry for *New York* under the heading *ATLANTIC FLYWAY* in the table; and

■ b. On page 48683, revising the entry for *Montana* under the heading *CENTRAL FLYWAY* in the table.

The revisions read as follows:

§ § 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

* * * * *

	Extended falconry dates
ATLANTIC FLYWAY	
* * * * * * *	
New York	
Ducks, mergansers and coots:	
Long Island Zone	Nov. 1–Nov. 23 & Nov. 28–Dec. 4 & Jan. 30–Feb. 13.
Northeastern Zone	Oct. 1–Oct. 7 & Oct. 31–Nov. 4 & Dec. 12–Jan. 13.
Southeastern Zone	Oct. 11–Nov. 11 & Jan. 1–Jan. 13.
Western Zone	Oct. 1–Oct. 21 & Dec. 5–Dec. 30.
* * * * * * *	
CENTRAL FLYWAY	
* * * * * * *	
Montana (2)	
Ducks, mergansers, and coots	Sept. 21–Sept. 30.
* * * * * * *	

* * * * *

Dated: August 10, 2016.

Tina A. Campbell,

Chief, Division of Policy, Performance, and Management Programs.

[FR Doc. 2016–19447 Filed 8–15–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–XE787

Fisheries of the Northeastern United States; Small-Mesh Multispecies Fishery; Adjustment to the Northern Red Hake Inseason Possession Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment.

SUMMARY: We announce the reduction of the commercial per-trip possession limit for northern red hake for the remainder of the 2016 fishing year. This action is required to prevent the northern red hake total allowable landing limit from being exceeded. This announcement informs the public that the northern red hake possession limit is reduced.

DATES: Effective August 16, 2016, through April 30, 2017.

FOR FURTHER INFORMATION CONTACT: Reid Lichwell, Fishery Management Specialist, 978–675–9112.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the red hake fishery are found at 50 CFR part 648. The small-mesh multispecies fishery is managed primarily through a series of exemptions from the Northeast Multispecies Fisheries Management Plan. The regulations describing the process to adjust inseason commercial possession limits of northern red hake are described in § 648.86(d)(4) and (5). These regulations require the National Marine Fisheries Service Regional Administrator, Greater Atlantic Region, to reduce the northern red hake possession limit from 3,000 lb (1,361 kg) to 1,500 lb (680 kg) when landings have been projected to reach or exceed 45 percent of the total allowable landings (TAL). The possession limit is required to be further reduced from 1,500 lb (680 kg) to 400 lb (181 kg) if landings are projected to reach or exceed 62.5 percent of the TAL, unless such a reduction would be expected to prevent the TAL from being reached. The final rule implementing the small-mesh multispecies specifications for 2016–2017, which published in the **Federal Register** on June 28, 2016 (81 FR 41866), set these inseason adjustment thresholds for the 2016 fishing year. These trip limit adjustment thresholds are accountability measures put in place because the annual catch limits (ACL) for northern red hake were exceeded for the 2012 and 2013 fishing years, and the northern red hake stock was experiencing overfishing.

Inseason Action

On August 8, 2016, the northern red hake commercial possession limit was reduced from 3,000 lb (1,361 kg) to 1,500 lb (680 kg) because the overall commercial landings reached 45 percent of the TAL. Based on commercial landings data reported through July 27, 2016, the northern red hake fishery is projected to reach 65.2 percent of the TAL on August 6, 2016. Based on this projection, we are required to reduce the commercial northern red hake possession limit from 1,500 lb (680 kg) to 400 lb (181 kg) to prevent the TAL from being exceeded. On the effective date of this action, no person may possess on board or land more than 400 lb (181 kg) of northern red hake per trip for the remainder of the fishing year (*i.e.*, through April 30, 2017).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–19503 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151130999–6225–01]

RIN 0648–XE782

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of Florida is transferring a portion of its 2016 commercial bluefish quota to the State of New York. These quota adjustments are necessary to comply with the Atlantic Bluefish Fishery Management Plan quota transfer provision. This announcement informs the public of the revised commercial quotas for Florida and New York.

DATES: Effective August 15, 2016, through December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scheimer, Fishery Management Specialist, (978) 281–9236.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found in 50 CFR 648.160 through 648.167. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.162.

The final rule implementing Amendment 1 to the Bluefish Fishery Management Plan published in the **Federal Register** on July 26, 2000 (65 FR 45844), and provided a mechanism for transferring bluefish quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Greater Atlantic Region, NMFS (Regional Administrator), can transfer or combine bluefish commercial quota under § 648.162(e)(1)(i) through (iii). The Regional Administrator is required to consider the criteria in § 648.162(e) in the evaluation of requests for quota transfers or combinations.

Florida is transferring 50,000 lb (22,679 kg) of Atlantic bluefish commercial quota to New York. This quota transfer was requested by the State of New York to ensure that its 2016 quota would not be exceeded. The Regional Administrator has determined that the criteria set forth in § 648.162(e)(1)(i) through (iii) have been met. The revised bluefish quotas for calendar year 2016 are: Florida, 391,394 lb (177,533 kg); and New York, 587,289 lb (266,390 kg). These quotas are based on the final rule implementing the 2016–2018 Atlantic Bluefish Specifications that became effective August 4, 2016, inclusive of previous commercial bluefish transfers that were implemented in that rule.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–19504 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 158
Tuesday, August 16, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS–SC–16–0057; SC16–983–1 CR]

Pistachios Grown in California, Arizona, and New Mexico; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of pistachios grown in California, Arizona, and New Mexico to determine whether they favor continuance of the marketing order that regulates the handling of pistachios produced in the production area.

DATES: The referendum will be conducted from November 1 through November 18, 2016. To vote in this referendum, producers must have produced pistachios within the designated production area during the period September 1, 2015, through August 31, 2016.

ADDRESSES: Copies of the marketing order may be obtained from the referendum agents at the California Marketing Field Office, 2202 Monterey Street, Suite 102B, Fresno, California 93721–3129, or the Office of the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Sommers, Marketing Specialist, or Jeffrey Smutny, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Peter.Sommers@ams.usda.gov* or *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 983 (7 CFR part 983), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the producers. The referendum shall be conducted from November 1 through November 18, 2016, among pistachio producers in the production area. Only pistachio producers who were engaged in the production of pistachios during the period of September 1, 2015, through August 31, 2016, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether producers favor the continuation of marketing order programs. USDA would consider termination of the order if continuance is not favored by a two-thirds majority of voting producers or a two-thirds majority of the volume represented in the referendum.

In evaluating the merits of continuance versus termination, USDA will consider the results of the continuance referendum and other relevant information regarding operation of the order. USDA will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum have been approved by the Office of Management and Budget (OMB), under OMB No. 0581–0215, Pistachios Grown in California, Arizona, and New Mexico. It has been estimated that it will take an average of 20 minutes for each of the approximately 1,150 growers of California, Arizona, and New Mexico pistachios to cast a ballot. Participation is voluntary. Ballots postmarked after November 18, 2016, will not be included in the vote tabulation.

Peter Sommers and Jeffrey Smutny of the California Marketing Field Office, Specialty Crop Programs, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR part 900.400–900.407).

Ballots will be mailed to all producers of record and may also be obtained from the referendum agents or from their appointees.

List of Subjects in 7 CFR Part 983

Marketing agreements and orders, Pistachios, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: August 10, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–19531 Filed 8–15–16; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2013–0044]

20 CFR Parts 404 and 416

RIN 0960–AH63

Revisions to Rules of Conduct and Standards of Responsibility for Appointed Representatives

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise our rules of conduct and standards of responsibility for representatives. We also propose to update and clarify procedures we use when we bring charges against a representative for violating our rules of conduct and standards of responsibilities for representatives. These changes are necessary to better protect the integrity of our administrative process and further clarify representatives' currently existing responsibilities in their conduct with us. The changes to our rules are not meant to suggest that any specific conduct is permissible under our existing rules; instead, we seek to ensure that our rules of conduct and standards of responsibility are clearer as a whole and directly address a broader range of inappropriate conduct.

DATES: To ensure that your comments are considered, we must receive them no later than October 17, 2016.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2013–0044 so that we may associate your comments with the correct rule.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2013–0044. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Maren Weight, Office of Appellate Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605–7100. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We may issue rules and regulations to administer the Social Security Act (Act). 42 U.S.C. 405(a), 406(a)(1), 902(a)(5), 1010(a), and 1383(d). We are revising our rules of conduct and standards of responsibility for representatives and other rules about the representation of parties in 20 CFR part 404 subpart R and part 416 subpart O.

Although the vast majority of representatives conduct business before us ethically, and conscientiously assist their clients, these changes are prompted by our concerns that some representatives are using our processes in a way that undermines the integrity of our programs. We seek to clarify that certain actions are prohibited and to provide additional means to address representative actions that affect the integrity of our programs and our ability to provide the best possible service to the public.

Clarification to Qualifications for Non-Attorney Representatives

Our current regulations specify in § 404.1705(b)(1) that a non-attorney must generally be known to have a good character and reputation to serve as a representative. In proposed § 404.1705(b)(4), we specify that certain convictions will preclude a non-attorney representative from demonstrating this requisite good character and reputation. We have noted in our existing policy that neither the Act nor our regulations define the terms "good character and reputation." In these rules, we propose to clarify these terms by including a non-exclusive list of examples that show that a person lacks good character and reputation, and which, if present, will demonstrate to us that a non-attorney is unqualified to serve as a representative.

New Rules of Conduct for Representatives and Clarification of Existing Rules

We are revising our rules of conduct for representatives to clarify their existing responsibilities under our regulations and to ensure their compliance with procedures designed to provide fair and efficient claim adjudication. We propose these changes to save limited administrative resources, process claims more efficiently, and protect the integrity of our programs.

Current § 404.1740(b)(3)(i) states that competent representation requires the "knowledge, skill, thoroughness and preparation reasonably necessary for the representation." In proposed § 404.1740(b)(3)(i), we specify that, in addition to the other requirements already listed, competent representation also includes reasonable and adequate familiarity with the evidence in a case, as well as knowledge of the applicable provisions of the Act, our regulations, and Social Security Rulings.

Consistent with regulatory changes in our 2014 final rules to scheduling and appearing at hearings,[1] we propose adding an affirmative duty in § 404.1740(b)(3) requiring representatives to provide to us, on our request, a specified number of dates and times the representative is available for a hearing. We also propose specifying as an affirmative duty the requirement that representatives withdraw from representation at a time and in a manner that does not disrupt claim processing; and, in particular, not to withdraw once we have scheduled a hearing unless the representative can show that a withdrawal is necessary due to extraordinary circumstances, as we determine on a case-by-case basis. We also added a paragraph in proposed § 404.1740(b)(3)(v) clarifying that a representative has an obligation to maintain prompt and timely communication with the claimant. This proposed new paragraph is consistent with many of the principles found in American Bar Association (ABA) Model Rule of Professional Conduct 1.4.[2]

In addition, for consistency with our 2015 final rules regarding submission of evidence in disability claims, we propose adding affirmative duties in proposed § 404.1740(b)(5) requiring that a representative, when he or she submits a medical or vocational opinion to us, disclose in writing whether the medical or vocational opinion is drafted, prepared, or issued by: An employee of the representative; an individual contracting with the representative for services; or an individual to whom the representative referred the claimant for suggested treatment.[3] In doing so, we clarify that

---

[1] In our 2014 final rules regarding changes to scheduling and appearing at hearings, we made changes to when a claimant may object to appearing at a hearing by video teleconferencing, or to the time and place of a hearing. 79 FR 39526 at 35931 (June 25, 2014).

[2] We acknowledge the ABA model rules apply only to attorneys, and our rules and regulations govern both attorney and non-attorney representatives. However, the ABA model rules are a helpful resource, as they address representation principles and practices relevant to our programs. The principles we cite in this proposed rule apply equally to attorney and non-attorney representatives.

[3] In our recent 2015 final rules regarding submission of evidence, we require a claimant to inform us about or submit all evidence that relates to whether or not he or she is blind or disabled, with certain exceptions for information subject to the attorney work product doctrine and communications subject to attorney-client privilege. Consistent with these recent rules regarding submission of evidence, the affirmative duty set forth in proposed § 404.1740(b)(5) will not require a representative to disclose attorney work product or communication subject to the attorney-client privilege as defined by § 404.1512(b)(2). In particular, the 2015 final rules provide that "if you tell your representative about the medical sources you have seen, your representative cannot refuse to

Continued

we do not find the behavior of referring a claimant to a medical or vocational provider in and of itself problematic, even in the particularly noted circumstances. By adding this requirement, we are merely indicating that, in the noted circumstances, a representative must disclose such a referral to us.

We also propose § 404.1740(b)(6) specifying that a representative must inform the agency if a claimant used the representative's services to commit fraud against us. This is consistent with requirements set forth by portions of ABA Model Rule 3.3 regarding the duty of candor toward the tribunal. We acknowledge that attorney representatives may be subject to state bar and ethics rules, which vary from state to state. However, all states recognize a version of the common law crime or fraud exception to privileged communications between an attorney and client. Furthermore, even if a state's rules conflicted with our rules, under the U.S. Constitution's Supremacy Clause, the federal rules take precedence when the representative is appearing in federal proceedings before us. Therefore, our rules would preempt any conflicting state bar and ethics rules.

In proposed § 404.1740(b)(7) and (8), we add affirmative duties that require a representative to disclose whether the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice. This includes instances in which a bar or court took administrative action to disbar or suspend the representative in lieu of disciplinary proceedings (*e.g.* acceptance of voluntary resignation pending disciplinary action); and also disclose whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency, again including instances in which the representative was disqualified in lieu of disciplinary proceedings. Our current regulations specify in § 404.1745(d) that such disbarments, suspensions, or disqualifications based upon misconduct constitute grounds for sanctions. While our current Appointment of Representative form (Form SSA–1696) requires a representative to disclose this information, our current policy does not require representatives to use this form, and, in some matters, a representative may be disbarred, suspended, or disqualified following appointment as a representative. Therefore, we proposed these new affirmative duties setting forth ongoing disclosure requirements. Similarly, in proposed § 404.1740(b)(9), we also require that a representative disclose to us whether he or she has been removed or suspended from practice by a professional licensing authority.

Current § 404.1740(c)(10) addresses instances in which a representative may be working with employees or assistants to commit misconduct. The current rule prohibits a representative from suggesting, assisting, or directing another person to violate our rules or regulations. We have proposed adding an affirmative duty in proposed § 404.1740(b)(10) which requires a representative to ensure that all of the representative's employees, assistants, partners, contractors, or any other person assisting the representative will be compliant with our rules of conduct and standards of responsibility. We have also specified in proposed § 404.1740(c)(14) that, within the scope of employment, failure by a representative to properly oversee the representative's employees, assistants, partners, contractors, or any person assisting the representative, constitutes sanctionable behavior. This provision applies where the representative has managerial or supervisory authority over the individual(s) in question, the individual's conduct would be a violation of our rules, the representative has reason to believe that misconduct has occurred or may occur, and, when possible, the representative fails to take remedial action.[4] Because many representatives associated with large organizations rely extensively on other employees and assistants when providing representational services to claimants, we believe that these new rules are necessary to ensure that claimants receive competent and effective representation and to protect the integrity of our administrative processes.

In proposed § 404.1740(c)(1), we specify that misleading a claimant, prospective claimant, or beneficiary regarding benefits or other rights under the Act includes misleading the claimant, prospective claimant, or beneficiary about that representative's services and qualifications. Both the Act and our rules provide claimants with a right to a representative, and, therefore, misleading statements about the representative's services and qualifications are material to the claimant's rights under the Act. However, we clarify that in situations where a misleading statement about the representative's services and qualifications adversely affects claim processing, to the extent permitted by our other rules, we will not disadvantage a claimant, potential claimant, or beneficiary because of a representative's misconduct. In addition, in proposed § 404.1740(c)(2), we specify that knowingly charging, collecting, or retaining an improper fee also includes soliciting a gift or other item of value other than what is authorized by law.

We have also proposed revising our current rules regarding submission of false or misleading evidence. In current § 404.1740(c)(3), we prohibit a representative from knowingly making, presenting, or participating in the making or presenting of certain false or misleading statements, assertions, or representations. In our 1998 final rules,[5] we stated that we based this rule in part on the criminal prohibitions in 18 U.S.C. 1001, which prohibit knowingly and willfully making materially false statements. The intent requirement set forth in the current rule is also consistent with ABA Model Rule 3.3(a)(1), which prohibits an attorney from knowingly making false statements of fact or law to a tribunal. As we emphasized in connection with the 2015 final rules on submission of evidence, the non-adversarial nature of the disability adjudication process requires that we maintain a high level of cooperation from claimants and, by extension, their representatives, in order to ensure that the agency obtains the information needed to make accurate disability determinations.[6] Therefore, in order to protect the integrity of our programs, we propose strengthening our current rule to prohibit the submission

---

disclose the identity of those medical sources to us based on the attorney-client privilege," and "if your representative asks a medical source to complete an opinion form related to your impairment(s), symptoms, or limitations, your representative cannot withhold the completed opinion form from us based on the attorney work product doctrine." 20 CFR 404.1512(b)(2)(iv). In the course of this rulemaking, we acknowledged that "state bar rules generally require client confidentiality and zealous representation," but we stated that we did not believe that "state bar rules prevent an attorney from complying with our Federal rule, which requires a representative to help a claimant satisfy his or her disclosure obligation," under our regulations. 80 FR 14828, 14832–33 (March 20, 2015); *see also* ABA Model Rule of Professional Conduct 1.6(b)(6) (attorney can reveal information relating to representation of a client "to comply with other law or a court order").

[4] These proposed affirmative duties and prohibited actions are consistent with ABA Model Rule 5.1, which requires that a partner in a law firm, or others with comparable managerial authority, make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

[5] 63 FR 41404 at 41416 (August 4, 1998).

[6] *See* 80 FR 14828 at 14831 (March 20, 2015).

of false or misleading evidence in matters where the representative has or should have reason to believe that the evidence is false or misleading and to prohibit any written statements, assertions, or representations, which the representative has or should have reason to believe are false or misleading. Likewise, in proposed § 404.1740(c)(7)(ii)(B), we specify that providing misleading information or misrepresenting facts that affect how we process a claim may also be sanctionable where the representative has or should have reason to believe the information or facts would mislead the agency or constitute a misrepresentation.

Our regulations currently prohibit attempts to influence the outcome of a decision, determination, or other administrative action by offering or granting an item of value to a presiding official, agency employee, or witness who is or may reasonably be involved in the decision making process, with certain exemptions. In proposed § 404.1740(c)(6), we specify that in addition to the current prohibitions on offering or granting items of value to agency employees or witnesses, we also may sanction a representative who influences or attempts to influence such an agency employee or presiding official by any means prohibited by law.

Current § 404.1740(c)(7)(ii) and (iii) addresses disruptive, threatening, and obstructive behavior by representatives. In our proposed rules, we have renumbered and proposed revisions to these rules. Current § 404.1740(c)(7)(iii) prohibits "threatening or intimidating language, gestures, or actions directed at a presiding official, witness, or agency employee that result in a disruption of the orderly presentation and reception of evidence." In our proposed rules, we have eliminated the requirement that such threats or intimidation result in a disruption of the orderly presentation and receipt of evidence, since such threats and intimidations are inherently prejudicial to the administrative proceedings. In proposed § 404.1740(c)(ii)(C), we add that a representative may not communicate with an agency employee or adjudicator outside the normal course of business or prescribed procedures in an attempt to influence the processing or outcome of a case.

Violations of Our Requirements

Under our current rules, we may begin proceedings to suspend or disqualify a representative when we have evidence that the representative fails to meet our qualification requirements or has violated our rules of conduct. We propose revising § 404.1745 to clarify that we may disqualify a non-attorney representative who has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary.

Notice of Charges Against a Representative

In § 404.1750, we propose reducing the amount of time a representative has to respond to our notice of charges from 30 days to 14 days because it will help us timely adjudicate possible representative misconduct matters and provide efficient service to claimants, potential claimants, recipients, and beneficiaries. This 14-day timeframe provides the representative ample time to respond to the charges, which usually consist of simply affirming or denying a series of factual allegations. Additionally, there is public interest in resolving these matters as quickly as possible because representatives may continue to represent claimants during the time that charges are pending. Reducing this timeframe will allow us to better protect the public by allowing less time for a representative who is found to have violated our rules to continue to represent claimants while charges are pending. Furthermore, quicker processing of these cases is also of particular interest to the person against whom we bring charges because it results in a more timely resolution of the matter. Finally, we note that irrespective of the reduced timeframe to respond to the charges, the representative will still have the opportunity to defend himself or herself before the hearing officer conducting the hearing, when a hearing is needed.

In regards to any fairness concerns, we expect that most individuals subject to this rule will easily be able to respond within the proposed timeframe, as it is not uncommon for us to seek disqualification based on a single charge involving legal or factual issues that are not complex, such as disbarment or improper retention of a fee. As we stated previously, charges usually consist of simply affirming or denying a series of factual allegations. However, because we propose reducing the standard time for a representative to respond to our notice of charges, we also propose retaining the rule to allow a representative to seek an extension of time for filing an answer upon a showing of good cause. Therefore, if a person against whom we brought charges indicates that he or she required additional time to respond, we would consider that information in determining whether to extend the period for filing an answer. Our current rules specify that the General Counsel or other delegated official may extend the period for filing an answer for good cause in accordance with § 404.911.

Hearing on the Charges

We propose clarifying in § 404.1765 that a hearing on the charges may be conducted at our discretion in person, by video teleconferencing, or by telephone. We add that we will not consider objections to the manner of appearance unless a party shows good cause why he or she cannot appear in the prescribed manner. We also propose to codify our existing policy by clarifying that a hearing officer may reopen the hearing for the receipt of additional evidence at any time before mailing the notice of the decision, subject to our limitations on submitting an answer to the charges. In addition, we propose requiring a hearing officer to mail the notice of hearing to the parties no later than 14 days prior to the hearing, rather than 20 days, so that we can conduct sanction proceedings in a timely manner. We have also proposed to codify our existing policy regarding hearing notices by specifying that a hearing officer will include the requirements and instructions for filing motions, requesting witnesses, and entering exhibits.

In addition, we propose rules clarifying the standard upon which motions for decisions on the record may be granted. We use a similar standard to that stated in Federal Rule of Civil Procedure 56 for summary judgment, specifying that a hearing officer may grant a motion for decision on the record if there is no genuine dispute as to any material fact and the movant is entitled to a decision as a matter of law. We have specified that before granting a motion for decision on the record, the hearing officer must first provide both parties with the opportunity to submit evidence and briefs. We propose this rule because, in our experience, many cases can be decided based on the record, and a hearing will often be unnecessary and delay any final decision. These proposed rules are consistent with the requirements of Section 206 of the Act, which specifies that we may suspend or disqualify a representative "after due notice and opportunity for hearing." Our proposed rules provide for an opportunity for a hearing, and the hearing officer may only grant a motion for decision on the record if a party demonstrates that there is no genuine dispute as to any material fact, such that any evidence or argument presented at the hearing would not alter the outcome of the case.

Requesting Review of the Hearing Officer's Decision

We propose reducing the amount of time to request Appeals Council review of a hearing officer's decision from 30 to 14 days in proposed § 404.1775. In our experience, representatives will often decline to seek review of adverse sanctions decisions. However, our sanctions decision is not final until the time to seek review has expired. During this time, a representative may continue to represent claimants. We believe that reducing the amount of time to seek Appeals Council review from 30 to 14 days will enable us to better protect the claimants we serve while providing sufficient protections for representatives in our sanctions process. Federal Rule of Appellate Procedure 4(b) provides for a comparable 14-day period to file a notice of appeal in criminal matters, in which significant liberty interests are at stake. In addition, our rules provide for submission of briefs to the Appeals Council subsequent to the filing of the request for review, allowing a representative additional time to formulate his or her arguments on appeal.

Clarifications to the Appeals Council Review Process

We propose clarifying in § 404.1780 that in the event a party appeals the hearing officer's decision and requests to appear at an oral argument, the Appeals Council will determine whether the parties will appear at a requested oral argument in person, by video teleconferencing, or by telephone.

Furthermore, we propose revising the rules about presenting evidence at the Appeals Council level. Based on our experience, some individuals are confused about whether the Appeals Council will accept additional evidence that was not submitted to the hearing officer. We propose revising the language in § 404.1785 to clarify that the Appeals Council, at its discretion, may accept additional evidence it finds material to the issues that existed when an individual filed an answer to the charges. When it does so, the Appeals Council will give the opposing party the opportunity to comment on the evidence prior to admitting it into the record. We also added language in proposed § 404.1790 stating the Appeals Council will determine whether additional material evidence warrants remand to a hearing officer for review or whether the Appeals Council will consider the evidence as part of its review of the case. In addition, we propose adding clarifying language in § 404.1790 that explains the Appeals Council will affirm the hearing officer's decision if the action, findings, and conclusions are supported by substantial evidence. We also propose adding that the Appeals Council may designate and publish final decisions as precedent for other actions brought against individuals charged with violating our rules.

Finally, we propose revising our rules in § 404.1799 about when and how a disqualified or suspended representative may seek the right to request reinstatement. Most individuals do not request reinstatement until they are in full compliance with our requirements. However, individuals who seek reinstatement prematurely waste valuable agency resources. Therefore, in addition to retaining our existing rule that a disqualified or suspended representative must wait at least one year from the effective date of the suspension or disqualification to request reinstatement, we propose revising our rules to state that a disqualified or sanctioned representative who has requested and been denied reinstatement by the Appeals Council must wait an additional three years before he or she can again request reinstatement. We are proposing this change because our experience shows that when the Appeals Council denies a request for reinstatement, the representative requesting reinstatement has usually not taken the appropriate actions to remedy the violation or does not understand the severity of the violation committed. Therefore, we are proposing this change to save valuable resources and ensure individuals take the necessary measures before submitting the initial or successive request for reinstatement. We also made a minor clarification in § 404.1799 that the Appeals Council uses the same procedures outlined in § 404.1776 for assigning a reviewing panel and processing a request for reinstatement after a suspension or disqualification.

In addition to these proposed changes to 20 CFR part 404, we are proposing changes to the rules set forth in 20 CFR part 416 to conform to our changes in part 404.

Clarity of These Rules

Executive Order 12866 as supplemented by Executive Order 13563 requires each agency to write all rules in plain language. In addition to your substantive comments on this NPRM, we invite your comments on how to make rules easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.* grouping and order of sections, use of headings, paragraphing?

Regulatory Procedures

Executive Order 12866 as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 and are subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These proposed rules contain reporting requirements in the regulation sections listed below. For some sections in these rules, we previously accounted for the public reporting burdens in the Information Collection Requests for the various forms the public uses to submit the information to SSA. Consequently, we are not reporting those sections below. Further, these proposed rules contain information collection activities at 20 CFR 404.1750 ((c), (e)(1), and (e)(2)), 404.1765(g)(1), 404.1775(b), 404.1799(d)(2), 416.1750 ((c), (e)(1), and (e)(2)), 416.1565(g)(1), 404.1575(b), and 416.1599(d)(2). However, 44 U.S.C. 3518(c)(1)(B)(ii) exempts these activities from the OMB clearance requirements under the Paperwork Reduction Act of 1995.

The sections below pose new public reporting burdens not covered by an existing OMB-approved form, and we provide burden estimates for them.

Regulation section	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.1740(b)(5); 416.1540(b)(5) ...	Disclose in writing, at the time a medical or vocational opinion is submitted to us or as soon as the representative is aware of the submission to us, if: The representative's employee or any individual contracting with the representative drafted, prepared, or issued the medical or vocational opinion; or. The representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of the individual providing opinion evidence.	43,600	1	5	3,633
404.1740(b)(6); 416.1540(b)(6) ...	Disclose to us in writing immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud.	50	1	5	4
404.1740(b)(7); 416.1540(b)(7) ...	Disclose to us in writing whether the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice.	50	1	5	4
404.1740(b)(8); 416.1540(b)(8) ...	Disclose to us in writing whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency.	10	1	5	1
404.1740(b)(9); 416.1540(b)(9) ...	Disclose to us in writing whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgement, reliability, or fitness to serve as a fiduciary.	10	1	5	1
Totals	....	436,120	....	....	3,643

For those listed above, SSA submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

Social Security Administration, Attn: Reports Clearance Officer, 1333 Annex, 6401 Security Blvd., Baltimore, MD 21235–0001, Fax Number: 410–965–6400, Email: *OR.Reports.Clearance@ssa.gov*

You can submit comments until October 17, 2016, which is 60 days after the publication of this notice. However, your comments will be most useful if you send them to SSA by September 15, 2016, which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits; Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III parts 404 and part 416 as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart R—Representation of Parties

■ 1. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6).

■ 2. Revise § 404.1705(b) to read as follows:

§ 404.1705 Who may be your representative

* * * * *

(b) You may appoint any person who is not an attorney to be your representative in dealings with us if the person—

(1) Is capable of giving valuable help to you in connection with your claim;

(2) Is not disqualified or suspended from acting as a representative in dealings with us;

(3) Is not prohibited by any law from acting as a representative; and

(4) Is generally known to have a good character and reputation. Persons lacking good character and reputation, include, but are not limited to, persons convicted of a felony (as defined by § 404.1506(c)), or any crime involving moral turpitude, dishonesty, false statements, misrepresentation, deceit, or theft.

* * * * *

■ 3. Amend § 404.1740 by
■ a. Revising paragraph (b)(3)(i);
■ b. Adding paragraphs (b)(3)(iii) through (v) and (b)(5) through (10);
■ c. Revising paragraphs (c)(1) through (3) and (6) and (7);
■ d. Removing from the end of paragraph (c)(12) the word "or";
■ e. Removing from paragraph (c)(13) the final period and adding in its place "; or"; and
■ f. Adding paragraph (c)(14).

The revisions and additions read as follows:

§ 404.1740 Rules of conduct and standards of responsibility for representatives.

* * * * *

(b) * * *

(3) Conduct his or her dealings in a manner that furthers the efficient, fair and orderly conduct of the administrative decision making process, including duties to:

(i) Provide competent representation to a claimant. Competent representation requires the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A representative must know the significant issue(s) in a claim, have reasonable and adequate familiarity with the evidence in the case, and have a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations, and Social Security Rulings.

* * * * *

(iii) When requested, provide us, in a manner we specify, potential dates and times that the representative will be available for a hearing. We will inform you how many potential dates and times we require to coordinate the hearing schedule.

(iv) Only withdraw representation at a time and in a manner that does not disrupt the processing or adjudication of a claim and provides the claimant adequate time to find new representation, if desired. A representative should not withdraw after a hearing is scheduled unless the representative can show that a withdrawal is necessary due to extraordinary circumstances, as we determine on a case-by-case basis.

(v) Maintain prompt and timely communication with the claimant, which includes, but is not limited to, reasonably informing the claimant of all matters concerning the representation, consulting with the claimant on an ongoing basis during the entire representational period, and promptly responding to a claimant's reasonable requests for information.

* * * * *

(5) Disclose in writing, at the time a medical or vocational opinion is submitted to us or as soon as the representative is aware of the submission to us, if:

(i) The representative's employee or any individual contracting with the representative drafted, prepared, or issued the medical or vocational opinion; or

(ii) The representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of the individual providing opinion evidence.

(6) Disclose to us immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud against us.

(7) Disclose to us whether the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice, including instances in which a bar or court took administrative action to disbar or suspend the representative in lieu of disciplinary proceedings (*e.g.* acceptance of voluntary resignation pending disciplinary action). If the disbarment or suspension occurs after the appointment of the representative, the representative will immediately disclose the disbarment or suspension to us.

(8) Disclose to us whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency, including instances in which a Federal program or agency took administrative action to disqualify the representative in lieu of disciplinary proceedings (*e.g.* acceptance of voluntary resignation pending disciplinary action). If the disqualification occurs after the appointment of the representative, the representative will immediately disclose the disqualification to us.

(9) Disclose to us whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary. If the removal or suspension occurs after the appointment of the representative, the representative will immediately disclose the removal or suspension to us.

(10) Ensure that all of the representative's employees, assistants, partners, contractors, or any person assisting the representative on claims for which the representative has been appointed, are compliant with these rules of conduct and standards of responsibility for representatives.

(c) * * *

(1) In any manner or by any means threaten, coerce, intimidate, deceive, or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act. This prohibition includes misleading a claimant, or prospective claimant or beneficiary, about the representative's services and qualifications.

(2) Knowingly charge, collect, or retain, or make any arrangement to charge, collect, or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation. This prohibition includes soliciting any gift or any other item of value, other than is what is authorized by law.

(3) Make or present, or participate in the making or presentation of, false or misleading oral or written statements, evidence, assertions, or representations about a material fact or law concerning a matter within our jurisdiction, in matters where the representative has or should have reason to believe that those statements, evidence, assertions or representations are false or misleading.

* * * * *

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination, or other administrative action by any means prohibited by law, or by offering or granting a loan, gift, entertainment, or anything of value to a presiding official, agency employee, or witness who is or may reasonably be expected to be involved in the administrative decision making process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence.

(7) Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including but not limited to:

(i) Repeated absences from or persistent tardiness at scheduled proceedings without good cause (see § 404.911(b));

(ii) Behavior that has the effect of improperly disrupting proceedings or obstructing the adjudicative process, including but not limited to:

(A) Directing threatening or intimidating language, gestures, or actions at a presiding official, witness, contractor, or agency employee;

(B) Providing misleading information or misrepresenting facts that affect how we process a claim, including but not limited to information relating to the claimant's work activity or the claimant's place of residence or mailing address in matters where the representative has or should have reason to believe that the information was misleading and the facts would constitute a misrepresentation;

(C) Communicating with agency staff or adjudicators outside the normal course of business or other prescribed procedures in an attempt to inappropriately influence the processing or outcome of a claim(s);

* * * * *

(14) Fail to oversee the representative's employees, assistants, partners, contractors, or any other person assisting the representative on claims for which the representative has been appointed, when the representative has managerial or supervisory authority over these individuals and:

(i) The individual's conduct would be a violation of these rules of conduct and standards of responsibility;

(ii) The representative has reason to believe that a violation of our rules of conduct and standards of responsibility would occur; and

(iii) When possible, the representative fails to take remedial action.

■ 4. Amend § 404.1745 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 404.1745 Violations of our requirements, rules, or standards.

* * * * *

(d) Has been, by reason of misconduct, disbarred or suspended from any bar or court to which he or she was previously admitted to practice (see § 404.1770(a));

(e) Has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency (see § 404.1770(a)); or

(f) Who is a non-attorney, has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary.

■ 5. Revise § 404.1750(c) through (f) to read as follows:

§ 404.1750 Notice of charges against a representative.

* * * * *

(c) We will advise the representative to file an answer, within 14 days from the date of the notice, or from the date the notice was delivered personally, stating why he or she should not be suspended or disqualified from acting as a representative in dealings with us.

(d) The General Counsel or other delegated official may extend the 14-day period for good cause in accordance with § 404.911.

(e) The representative must—

(1) Answer the notice in writing under oath (or affirmation); and

(2) File the answer with the Social Security Administration, at the address specified on the notice, within the 14-day time period.

(f) If the representative does not file an answer within the 14-day time period, he or she does not have the right to present evidence, except as may be provided in § 404.1765(g).

■ 6. Amend § 404.1765 by revising paragraphs (c), (d)(1) and (3), and (g) to read as follows:

§ 404.1765 Hearing on charges.

* * * * *

(c) *Time and place of hearing.* The hearing officer will mail the parties a written notice of the hearing at their last known addresses, at least 14 days before the date set for the hearing. The notice will inform the parties whether the appearance of the parties or any witnesses will be in person, by video teleconferencing, or by telephone. The notice will also include requirements and instructions for filing motions, requesting witnesses, and entering exhibits.

(d) * * * (1) The hearing officer may change the time and place for the hearing, either on his or her own initiative, or at the request of the representative or the other party to the hearing. The hearing officer will not consider objections to the manner of appearance of parties or witnesses, unless the party shows good cause not to appear in the prescribed manner.

* * * * *

(3) Subject to the limitations in paragraph (g)(2) of this section, the hearing officer may reopen the hearing for the receipt of additional evidence at any time before mailing notice of the decision.

* * * * *

(g) *Conduct of the hearing.* (1) The representative or the other party may file a motion for decision on the basis of the record prior to the hearing. The hearing officer will give the representative and the other party a reasonable amount of time to submit any evidence and to file briefs or other written statements as to fact and law prior to deciding the motion. If the hearing officer concludes that there is no genuine dispute as to any material fact and the movant is entitled to a decision as a matter of law, the hearing officer may grant the motion and issue a decision in accordance with the provisions of § 404.1770.

(2) If the representative did not file an answer to the charges, he or she has no right to present evidence at the hearing. The hearing officer may make or recommend a decision on the basis of the record, or permit the representative to present a statement about the sufficiency of the evidence or the validity of the proceedings upon which the suspension or disqualification, if it occurred, would be based.

(3) The hearing officer will make the hearing open to the representative, to the other party, and to any persons the hearing officer or the parties consider necessary or proper. The hearing officer will inquire fully into the matters being considered, hear the testimony of witnesses, and accept any documents that are material.

(4) The hearing officer has the right to decide the order in which the evidence and the allegations will be presented and the conduct of the hearing.

* * * * *

■ 7. Revise § 404.1775(b) to read as follows:

§ 404.1775 Requesting review of the hearing officer's decision.

* * * * *

(b) *Time and place of filing request for review.* The party requesting review will file the request for review in writing with the Appeals Council within 14 days from the date the hearing officer mailed the notice. The party requesting review will certify that a copy of the request for review and of any documents that are submitted have been mailed to the opposing party.

■ 8. Revise § 404.1780(a) to read as follows:

§ 404.1780 Appeals Council's review of hearing officer's decision.

(a) Upon request, the Appeals Council will give the parties a reasonable time to file briefs or other written statements as to fact and law, and to request to appear before the Appeals Council to present oral argument. When oral argument is requested within the time designated by the Appeals Council, the Appeals Council will grant the request for oral argument and determine whether the parties will appear at the oral argument in person, by video teleconferencing, or by telephone. If oral argument is not requested within the time designated by the Appeals Council, the Appeals Council may deny the request.

* * * * *

■ 9. Revise § 404.1785 to read as follows:

§ 404.1785 Evidence permitted on review.

(a) *General.* Generally, the Appeals Council will not consider evidence in addition to that introduced at the hearing. However, if the Appeals Council finds the evidence offered is material to an issue it is considering, it may consider that evidence as described in paragraph (b) of this section.

(b) *Individual charged filed an answer.* (1) When the Appeals Council finds that additional material evidence to the charges is available, and the individual charged filed an answer to the charges, the Appeals Council will allow the party with the information to submit the additional evidence.

(2) Before the additional evidence is admitted into the record, the Appeals Council will mail a notice to the parties, informing them that evidence about certain issues was submitted. The Appeals Council will give each party a reasonable opportunity to comment on the evidence and to present other evidence that is material to the issue it is considering.

(3) The Appeals Council will determine whether the additional evidence warrants a new review by a hearing officer or whether the Appeals Council will consider the additional evidence as part of its review of the case.

(c) *Individual charged did not file an answer.* If the representative did not file an answer to the charges, the representative may not introduce evidence that was not considered at the hearing.

■ 10. Amend § 404.1790 by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 404.1790 Appeals Council's decision.

(a) The Appeals Council will base its decision upon the evidence in the hearing record and any other evidence it may permit on review. The Appeals Council will affirm the hearing officer's decision if the action, findings, and conclusions are supported by substantial evidence. If the hearing officer's decision is not supported by substantial evidence, the Appeals Council will either:

(1) Reverse or modify the hearing officer's decision; or

(2) Return the case to the hearing officer for further proceedings.

* * * * *

(f) The Appeals Council may designate and publish certain final decisions as precedent for other actions brought under our representative conduct provisions. Prior to making a decision public, we may remove or redact information from the decision.

■ 11. Amend § 404.1799 by:

■ a. Adding a sentence to the end of paragraph (a); and

■ b. Revising paragraphs (d)(2) and (f).

The additions and revisions read as follows:

§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.

(a) * * * The Appeals Council will assign and process a request for reinstatement using the same general procedures described in § 404.1776.

* * * * *

(d) * * *

(2) If a person was disqualified because he or she had been disbarred, suspended, or removed from practice for the reasons described in § 404.1745(d) through (f), the Appeals Council will grant a request for reinstatement as a representative only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that he or she has been admitted (or readmitted) to and is in good standing with the court, bar, or other governmental or professional licensing authority from which he or she had been disbarred, suspended, or removed from practice.

* * * * *

(f) If the Appeals Council decides not to grant the request, it will not consider another request before the end of 3 years from the date of the notice of the previous denial.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart O—Representation of Parties

■ 12. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1127 and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–6 and 1383(d)).

■ 13. Revise § 416.1505(b) to read as follows:

§ 416.1505 Who may be your representative.

* * * * *

(b) You may appoint any person who is not an attorney to be your representative in dealings with us if the person—

(1) Is capable of giving valuable help to you in connection with your claim;

(2) Is not disqualified or suspended from acting as a representative in dealings with us;

(3) Is not prohibited by any law from acting as a representative; and

(4) Is generally known to have a good character and reputation. Persons lacking good character and reputation, include, but are not limited to, persons convicted of a felony (as defined by § 404.1506(c)) of this chapter, or any crime involving moral turpitude, dishonesty, false statement, misrepresentations, deceit, or theft.

* * * * *

■ 14. Amend § 416.1540 by:

■ a. Revising paragraph (b)(3) introductory text and (b)(3)(i);

■ b. Adding paragraphs (b)(3)(iii) through (v) and (b)(5) through (10);

■ c. Revising paragraphs (c)(1) through (3), (c)(6), and (c)(7)(i) and (ii); and

■ d. Adding paragraph (c)(14).

The revisions and additions read as follows:

§ 416.1540 Rules of conduct and standards of responsibility for representatives.

* * * * *

(b) * * *

(3) Conduct his or her dealings in a manner that furthers the efficient, fair and orderly conduct of the administrative decision making process, including duties to:

(i) Provide competent representation to a claimant. Competent representation requires the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. A representative must know the significant issue(s) in a claim, have reasonable and adequate familiarity with the evidence in the case, and have a working knowledge of the applicable provisions of the Social Security Act, as amended, the regulations, and Social Security Rulings.

* * * * *

(iii) When requested, provide us, in a manner we specify, potential dates and times that the representative will be available for a hearing. We will inform you how many potential dates and times we require to coordinate the hearing schedule.

(iv) Only withdraw representation at a time and in a manner that does not disrupt the processing or adjudication of a claim and provides the claimant adequate time to find new representation, if desired. A representative should not withdraw after a hearing is scheduled unless the representative can show that a withdrawal is necessary due to extraordinary circumstances, as we determine on a case-by-case basis.

(v) Maintain prompt and timely communication with the claimant, which includes, but is not limited to, reasonably informing the claimant of all matters concerning the representation, consulting with the claimant on an ongoing basis during the entire representational period, and promptly responding to a claimant's reasonable requests for information.

* * * * *

(5) Disclose in writing, at the time a medical or vocational opinion is submitted to us or as soon as the representative is aware of the submission to us, if:

(i) The representative's employee or any individual contracting with the representative drafted, prepared, or issued the medical or vocational opinion; or

(ii) The representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of the individual providing opinion evidence.

(6) Disclose to us immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud against us.

(7) Disclose to us if the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice, including instances in which a bar or court took administrative action to disbar or suspend the representative in lieu of disciplinary proceedings (*e.g.* acceptance of voluntary resignation pending disciplinary action). If the disbarment or suspension occurs after the appointment of the representative, the representative will immediately disclose the disbarment or suspension to us.

(8) Disclose to us whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency, including instances in which a Federal program or agency took administrative action to disqualify the representative in lieu of disciplinary proceedings (*e.g.* acceptance of voluntary resignation pending disciplinary action). If the disbarment or suspension occurs after the appointment of the representative, the representative will immediately disclose the disqualification to us.

(9) Disclose to us whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary. If the removal or suspension occurs after the appointment of the representative, the representative will immediately disclose the removal or suspension to us.

(10) Ensure that all of the representative's employees, assistants, partners, contractors, or any person assisting the representative on claims for which the representative has been appointed, are compliant with these rules of conduct and standards of responsibility for representatives.

(c) * * *

(1) In any manner or by any means threaten, coerce, intimidate, deceive, or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act. This prohibition includes misleading a claimant, or prospective claimant or beneficiary, about the representative's services and qualifications.

(2) Knowingly charge, collect, or retain, or make any arrangement to charge, collect, or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation. This prohibition includes soliciting any gift or any other item of value, other than is what is authorized by law.

(3) Make or present, or participate in the making or presentation of, false or misleading oral or written statements, evidence, assertions, or representations about a material fact or law concerning a matter within our jurisdiction, in matters where the representative has or should have reason to believe that those statements, evidence, assertions or representations are false or misleading.

* * * * *

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination, or other administrative action by any means prohibited by law, or by offering or granting a loan, gift, entertainment, or anything of value to a presiding official, agency employee, or witness who is or may reasonably be expected to be involved in the administrative decision making process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence.

(7) * * *

(i) Repeated absences from or persistent tardiness at scheduled proceedings without good cause (see § 416.1411(b));

(ii) Behavior that has the effect of improperly disrupting proceedings or obstructing the adjudicative process, including but not limited to:

(A) Directing threatening or intimidating language, gestures, or actions at a presiding official, witness, contractor, or agency employee;

(B) Providing misleading information or misrepresenting facts that affect how we process a claim, including but not limited to information relating to the claimant's work activity or the claimant's place of residence or mailing address in matters where the representative has or should have reason to believe that the information was misleading and the facts would constitute a misrepresentation;

(C) Communicating with agency staff or adjudicators outside the normal course of business or other prescribed procedures in an attempt to inappropriately influence the processing or outcome of a claim(s);

* * * * *

(14) Fail to oversee the representative's employees, assistants, partners, contractors, or any other person assisting the representative on claims for which the representative has been appointed, when the representative has managerial or supervisory authority over these individuals and:

(i) The individual's conduct would be a violation of these rules of conduct and standards of responsibility;

(ii) The representative has reason to believe a violation of our rules of conduct and standards of responsibility would occur; and

(iii) When possible, the representative fails to take remedial action.

■ 15. Amend § 416.1545 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 416.1545 Violations of our requirements, rules, or standards.

* * * * *

(d) Has been, by reason of misconduct, disbarred or suspended from any bar or court to which he or she was previously admitted to practice (see § 416.1570(a));

(e) Has been, by reason of misconduct, disqualified from participating in or appearing before any Federal program or agency (see § 416.1570(a)); or

(f) Who is a non-attorney, has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the person's character, integrity, judgment, reliability, or fitness to serve as a fiduciary.

■ 16. Revise § 416.1550(c) through (f) to read as follows:

§ 416.1550 Notice of charges against a representative.

* * * * *

(c) We will advise the representative to file an answer, within 14 days from the date of the notice, or from the date the notice was delivered personally, stating why he or she should not be suspended or disqualified from acting as a representative in dealings with us.

(d) The General Counsel or other delegated official may extend the 14-day period for good cause in accordance with § 416.1411.

(e) The representative must—

(1) Answer the notice in writing under oath (or affirmation); and

(2) File the answer with the Social Security Administration, at the address specified on the notice, within the 14-day time period.

(f) If the representative does not file an answer within the 14-day time period, he or she does not have the right to present evidence, except as may be provided in § 416.1565(g).

■ 17. Amend § 416.1565 by revising paragraphs (c), (d)(1) and (2), and (g) to read as follows:

§ 416.1565 Hearing on charges.

* * * * *

(c) *Time and place of hearing.* The hearing officer will mail the parties a written notice of the hearing at their last known addresses, at least 14 days before the date set for the hearing. The notice will inform the parties whether the appearance of the parties or any witnesses will be in person, by video teleconferencing, or by telephone. The notice will also include requirements and instructions for filing motions, requesting witnesses, and entering exhibits.

(d) * * * (1) The hearing officer may change the time and place for the hearing, either on his or her own initiative, or at the request of the representative or the other party to the hearing. The hearing officer will not consider objections to the manner of appearance of parties or witnesses, unless the party shows good cause not to appear in the prescribed manner.

* * * * *

(3) Subject to the limitations in paragraph (g)(2) of this section, the hearing officer may reopen the hearing for the receipt of additional evidence at any time before mailing notice of the decision.

* * * * *

(g) *Conduct of the hearing.* (1) The representative or the other party may file a motion for decision on the basis of the record prior to the hearing. The hearing officer will give the representative and the other party a reasonable amount of time to submit any evidence and to file briefs or other written statements as to fact and law prior to deciding the motion. If the hearing officer concludes that there is no genuine dispute as to any material fact and the movant is entitled to a decision as a matter of law, the hearing officer may grant the motion and issue a decision in accordance with the provisions of § 416.1570.

(2) If the representative did not file an answer to the charges, he or she has no right to present evidence at the hearing. The hearing officer may make or recommend a decision on the basis of the record, or permit the representative to present a statement about the sufficiency of the evidence or the validity of the proceedings upon which the suspension or disqualification, if it occurred, would be based.

(3) The hearing officer will make the hearing open to the representative, to the other party, and to any persons the hearing officer or the parties consider necessary or proper. The hearing officer will inquire fully into the matters being considered, hear the testimony of witnesses, and accept any documents that are material.

(4) The hearing officer has the right to decide the order in which the evidence and the allegations will be presented and the conduct of the hearing.

* * * * *

■ 18. Revise § 416.1575(b) to read as follows:

§ 416.1575 Requesting review of the hearing officer's decision.

* * * * *

(b) *Time and place of filing request for review.* The party requesting review will file the request for review in writing with the Appeals Council within 14 days from the date the hearing officer mailed the notice. The party requesting review will certify that a copy of the request for review and of any documents that are submitted have been mailed to the opposing party.

■ 19. Revise § 416.1580(a) to read as follows:

§ 416.1580 Appeals Council's review of hearing officer's decision.

(a) Upon request, the Appeals Council will give the parties a reasonable time to file briefs or other written statements as to fact and law, and to request to appear before the Appeals Council to present oral argument. When oral argument is requested within the time designated by the Appeals Council, the Appeals Council will grant the request for oral argument, and determine whether the parties will appear at the oral argument in person, by video teleconferencing, or by telephone. If oral argument is not requested within the time designated by the Appeals Council, the Appeals Council may deny the request.

* * * * *

■ 20. Revise § 416.1585 to read as follows:

§ 416.1585 Evidence permitted on review.

(a) *General.* Generally, the Appeals Council will not consider evidence in addition to that introduced at the hearing. However, if the Appeals Council finds the evidence offered is material to an issue it is considering, it may consider that evidence as described in paragraph (b) of this section.

(b) *Individual charged filed an answer.* (1) When the Appeals Council finds that additional material evidence to the charges is available, and the individual charged filed an answer to the charges, the Appeals Council will allow the party with the information to submit the additional evidence.

(2) Before the additional evidence is admitted into the record, the Appeals Council will mail a notice to the parties, informing them that evidence about certain issues was submitted. The Appeals Council will give each party a reasonable opportunity to comment on the evidence and to present other evidence that is material to the issue it is considering.

(3) The Appeals Council will determine whether the additional evidence warrants a new review by a hearing officer or whether the Appeals Council will consider the additional evidence as part of its review of the case.

(c) *Individual charged did not file an answer.* If the representative did not file an answer to the charges, the representative may not introduce evidence that was not considered at the hearing.

■ 21. Amend § 416.1590 by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 416.1590 Appeals Council's decision.

(a) The Appeals Council will base its decision upon the evidence in the hearing record and any other evidence it may permit on review. The Appeals Council will affirm the hearing officer's decision if the action, findings, and conclusions are supported by substantial evidence. If the hearing officer's decision is not supported by substantial evidence, the Appeals Council will either:

(1) Reverse or modify the hearing officer's decision; or

(2) Return the case to the hearing officer for further proceedings.

* * * * *

(f) The Appeals Council may designate and publish certain final decisions as precedent for other actions brought under our representative conduct provisions. Prior to making a decision public, we may remove or redact information from the decision.

■ 22. Amend § 416.1599 by:

■ a. Adding a sentence to the end of paragraph (a); and

■ b. Revising paragraphs (d)(2) and (f).

The additions and revisions read as follows:

§ 416.1599 Reinstatement after suspension or disqualification—period of suspension not expired.

(a) * * * The Appeals Council will assign and process a request for reinstatement using the same general procedures described in § 416.1576.

* * * * *

(d) * * *

(2) If a person was disqualified because he or she had been disbarred, suspended, or removed from practice for the reasons described in § 416.1545(d) through (f), the Appeals Council will grant a request for reinstatement as a representative only if the criterion in paragraph (d)(1) of this section is met and the disqualified person shows that he or she has been admitted (or readmitted) to and is in good standing with the court, bar, or other governmental or professional licensing authority from which he or she had been disbarred, suspended, or removed from practice.

* * * * *

(f) If the Appeals Council decides not to grant the request, it will not consider another request before the end of 3 years from the date of the notice of the previous denial.

[FR Doc. 2016–19384 Filed 8–15–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2015–1118]

RIN 1625–AA01

Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting and reopening of comment period.

SUMMARY: The Coast Guard announces an August 17, 2016 public meeting to receive comments on an advance notice of proposed rulemaking (ANPRM) for anchorage grounds that was published in the **Federal Register** on April 19, 2016. As stated in the ANPRM, the Coast Guard is considering amending the regulations for Hampton Roads, VA, and adjacent waters anchorages by establishing a new anchorage, near Cape Charles, VA, on the Lower Chesapeake Bay. We are reopening the comment period on the ANPRM so that comments may be received both at the public meeting and up to 2 weeks after the public meeting.

DATES: A public meeting will be held on Wednesday, August 17, 2016, from 6 p.m. to 7:30 p.m., to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. All comments and related material submitted after the meeting must be received by the Coast Guard on or before August 31, 2016.

ADDRESSES: The public meeting will be held at Cape Charles Civic Center, 500 Tazewell Avenue, Cape Charles, VA 23310.

You may submit written comments identified by docket number USCG–2015–1118 using the Federal eRulemaking Portal at *http://www.regulations.gov.* Comments and related material must be received by the Coast Guard on or before August 31, 2016. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or the advance proposed rule, please call or email LCDR Barbara Wilk, Sector Hampton Roads Waterways Management Officer, Coast Guard; telephone 757–668–5581, email *Barbara.wilk@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

We published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** on April 19, 2016 (81 FR 22939), entitled "Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA." In it we stated our intention to hold public meetings, and to publish a notice announcing the location and date (81 FR 22940). This document is the notice of that meeting.

In the ANPRM, we stated that the Coast Guard is considering amending the regulations for Hampton Roads, VA and adjacent waters anchorages by establishing a new anchorage, near Cape Charles, VA on the Lower Chesapeake Bay.

You may view the ANPRM in our online docket, in addition to supporting documents prepared by the Coast Guard (Illustration Contemplated Anchorage R), and comments submitted thus far by going to *http://www.regulations.gov.* Once there, insert "USCG–2015–1118" in the "Keyword" box and click "Search."

We encourage you to participate in this rulemaking by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Comments submitted after the meeting must reach the Coast Guard on or before August 31, 2016. We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Agenda of Public Meeting

The agenda includes the following:

(1) Introduction of speakers.

(2) Overview of meeting format.

(3) Background on proposed commercial anchorage.

(4) Comments from interested persons.

Comments may be delivered in written form at the public meeting and made part of the docket or delivered in oral presentations not to exceed 10 minutes.

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Barbara Wilk at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding its "Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA" advance notice of proposed rulemaking on Wednesday, August 17, 2016, from 6 p.m. to 7:30 p.m., at Cape Charles Civic Center, 500 Tazewell Avenue, Cape Charles, VA 23310. A written summary of the meeting and comments will be placed in the docket.

Dated: August 3, 2016.

R.J. Wester,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2016–19510 Filed 8–15–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0350; FRL–9950–72–Region 3]

Air Plan Approval; DC; Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the state implementation plan (SIP) revision submitted by the District of Columbia (the District) pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The District has made a submittal addressing the infrastructure requirements for the 2012 annual fine particulate matter ($PM_{2.5}$) NAAQS. This action is being taken under the CAA. In the Final Rules section of this **Federal Register**, EPA is approving the District's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation is included in a technical support document (TSD) prepared in support of this rulemaking action. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 15, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0350 at *http://www.regulations.gov,* or via email to *fernandez.cristina@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.* A copy of the TSD is available, upon request, from the EPA Regional Office listed in this document or is also available electronically within the Docket for this rulemaking action.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: August 4, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–19389 Filed 8–15–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0210; FRL–9950–70–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Case by Case Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the state implementation plan (SIP) revision submitted by the Commonwealth of Virginia for inclusion of revised Virginia regulations in the Virginia SIP which incorporate EPA's compliance date for implementation of case-by-case reasonably available control technology (RACT) determinations for the 2008 8-hour ozone national ambient air quality standard (NAAQS). In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP

submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 15, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0210 at *http://www.regulations.gov,* or via email to *fernandez.cristina@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Leslie Jones Doherty, (215) 814–3409 or by email at *jones.leslie@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: August 2, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–19387 Filed 8–15–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160126052–6052–01]

RIN 0648–BF72

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 19

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement through regulations measures included in Amendment 19 to the Atlantic Sea Scallop Fishery Management Plan, which the New England Fishery Management Council adopted and submitted to NMFS for approval. Amendment 19 would establish a specifications process outside of the current framework adjustment process to implement management measures that are typically adjusted on an annual or biennial basis and change the start of the scallop fishing year from March 1 to April 1. This amendment is intended to streamline the development and implementation of annual specifications and reduce the administrative burden.

DATES: Comments must be received by September 15, 2016.

ADDRESSES: The Council developed an environmental assessment (EA) for this action that describes the proposed measures and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the Amendment, the EA, and the Regulatory Impact Review (RIR) are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

You may submit comments on this document, identified by NOAA–NMFS–2016–0028, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0028,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Scallop Amendment 19 Proposed Rule."

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION:

Background

The scallop fishery's management unit ranges from the shorelines of Maine through North Carolina to the outer boundary of the Exclusive Economic Zone. The Atlantic Sea Scallop Fishery Management Plan (FMP), established in 1982, includes a number of amendments and framework adjustments that have revised and refined the fishery's management. The Council has had to rely on the framework adjustment process to set scallop fishery measures, often referred to as specifications, that occur annually or biennially. Typically, these specifications include annual catch limits, days-at-sea (DAS), rotational area management, possession limits, access area trip allocations, individual fishing quota (IFQ) allocations, and allocations for vessels with Northern Gulf of Maine permits. These framework adjustments often include other management measures to the FMP and are often implemented 2 to 3 months after the March 1 start of the scallop fishing year (March 1 through February 28/29).

Amendment 4 to the Scallop FMP (59 FR 2757, January 19, 1994), was a major shift in scallop fishery management. It established a limited access permit and effort control program and the new permits and effort control became effective on March 1, 1994. Framework Adjustment 1 (59 FR 36720, July 19, 1994) formally adopted March 1 as the start of the scallop fishing year. There was no biological or economic rationale for originally selecting this date as the start of the fishing year: Framework 1 codified the March 1 Amendment 4 effective date as the start of the fishing year so that allocations for 1994 spanned a 12-month period in order to ensure a reduction in fishing effort the first year of the DAS effort-control program. This fishing year has remained in place since that time, even though specifications have become increasingly more complicated with the development of the scallop access area rotation program in 2004 and IFQ fishery in 2010.

In the last 16 years following Framework 11, there have been 12 actions that set annual scallop specifications. Four of those actions set specifications for 2 years, which ensured that the second year's specifications for each of those actions were implemented on March 1. Aside from these biennial frameworks, we have only been able to set specifications by March 1 on two occasions, both involving special circumstances (*i.e.,* the proposed rule was waived for one framework action and Council took final action 2 months earlier than usual for the other action).

Typically, the Council begins developing a specifications-setting framework in June. Scallop biomass estimates are provided through scallop surveys conducted by NMFS and other research institutions in the spring and summer. These estimates are not generally available for consideration until the early fall, at which point the Scallop Plan Development Team (PDT) develops and analyzes fishery allocation alternatives for Council consideration. In order to incorporate the most recent available scallop survey information into these alternatives, which has proved essential in setting appropriate access area catch levels, the Council has been taking final action in November and NMFS has typically implemented allocations in May or June.

In 2013, the Council began developing specifications on an annual basis via frameworks at the request of the industry to avoid biennial specifications that resulted in the second year specifications being out of sync with what the most recent annual surveys indicate should be harvested in a given area. However, this meant that the annual specifications were likely to be late every year due to availability of relevant data. To address this problem, the Council has been specifying "default" specifications for the year after annual specifications are set to fill the gap between the end of the fishing year and the setting of new specifications for the next fishing year. Implementing these "default" specifications every year is an administrative burden to NMFS staff and can result in complex inseason changes in fishery specifications. In addition, default specifications lead to confusion and uncertainty for the fleet, as well as potentially negative impacts on the resource and fishery if effort shifts into areas or seasons that are less desirable as a result of delayed measures.

The Council initiated Amendment 19 to develop an alternative to the framework adjustment process to implement specifications closer to the start of the scallop fishing year. To address these timing issues while still supporting the current timeline for integrating the best available science into the management process, Amendment 19 proposes to:

- Establish a more timely and less complicated specification process that is limited in the types of measures that can be implemented and is not bound by the procedural requirements of the amendment and framework processes; and
- Adjust the scallop fishing year to April 1 through March 31.

These proposed measures are further described below.

Proposed Measures

Establish a New Specification Process

Establishing a separate process for implementing specifications in the Scallop FMP instead of a framework process would help ensure that such specifications go into place on or about the start of the scallop fishing year, in part because the Council would not be required to discuss measures over the course of two Council meetings, as is required under a framework. In addition, by limiting the specifications process to implementing only certain types of measures, other types of management measures that typically get added to specifications frameworks would not be included, thereby simplifying the development and rulemaking for specifications.

The Scallop PDT would meet at least every two years to assess the status of the scallop resource and to develop and recommend specifications for up to 2 years, as well as second or third-year default measures, for the Atlantic Sea Scallop Oversight Committee and the Council to consider. The types of measures that could be implemented through the specifications process are limited to the following: Overfishing limit (OFL); overall annual biological catch (ABC)/annual catch limit (ACL); sub-ACLs; sub-annual catch targets (ACTs); DAS open area allocations; possession limits; modifications to rotational area management (*e.g.,* schedule, rotational closures and openings, seasonal restrictions, modifications to boundaries, etc.); access area limited access poundage allocations and Limited Access General Category (LAGC) Individual Fishing Quota (IFQ) fleet-wide trip allocations; annual incidental catch target total allowable catch (TAC); and Northern Gulf of Maine (NGOM) TAC.

The Council would review these recommendations and, after considering public comments, recommend appropriate specifications for 1 or 2 years, as well as second or third-year default measures, to NMFS. NMFS would approve, disapprove, or partially approve the specifications recommended by the Council and publish the approved specifications in the **Federal Register**.

In addition, the PDT would update the Stock Assessment and Fishery Evaluation Report at least every 2 years that provides the information and analysis needed to evaluate potential management adjustments.

The PDT would meet at least once during the interim years to review the status of the stock relative to the overfishing definition if information is available to do so. If the Council determines that the approved specifications should be adjusted during the 2-year time period, it can do so through the specifications process.

The Council could set scallop allocations through a specifications action in conjunction with a framework to develop more robust management measures, but the more complicated an action is and the more management measures under consideration generally means the action will take longer to complete, be approved, and be effective.

Changing the Start of the Fishing Year to April 1

Although developing a specifications action would save some time in the development of allocations, it would not guarantee allocations would be in place by March 1 of each year because of the timing of data becoming available that are necessary to set the specifications. It is more likely that allocations could be implemented on April 1, a month after the current start of the fishing year. Therefore, the Council is also recommending that the fishing year be changed to April 1 through March 31. Pushing the fishing year back 1 month would increase the likelihood that NMFS would be able to implement simple specifications actions at the start of the scallop fishing year on a more consistent basis and not need to implement default measures at all.

To give the industry time to account for this change in its business planning, the Council recommends and NMFS proposes that this measure not be effective until fishing year 2018. Because the current fishing year began on March 1, 2016, fishing year 2016 would be unaffected by this change. Fishing year 2017 would need to be 13 months long, running from March 1, 2017, through March 31, 2018. The Council intends to prorate allocations appropriately for 2017 to account for this additional month. On April 1, 2018, the scallop fishing year would officially change for fishing year 2018 and beyond.

Amendment 19 would also adjust the scallop permit year so that it continues to match the official fishing year (*i.e.*, scallop permits would need to be renewed by April 1 of each year). This change would also be effective beginning in fishing year 2018.

In addition, NMFS and Council staff discussed other, non-regulatory streamlining initiatives that will result in time-savings in implementing final allocations. These include preparing a decision draft of an EA immediately following the Council's final action on a framework and publishing a proposed rule prior to NMFS' formal review of the EA. These measures will assist in implementing simple, non-controversial specifications actions on a quicker timeline than typical frameworks.

The Council adopted Amendment 19 on December 3, 2015, and submitted it to NMFS on July 14, 2016, for review and approval. The Council has reviewed the Amendment 19 proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the MSA. A Notice of Availability (NOA) for Amendment 19 was published in the **Federal Register** on July 20, 2016 (81 FR 47152). The comment period on Amendment 19 NOA ends on September 19, 2016. Comments submitted on the NOA and/or this proposed rule prior to September 19, 2016, will be considered in NMFS's decision to approve, partially approve, or disapprove Amendment 19. NMFS will consider comments received by the end of the comment period for this proposed rule September 15, 2016 in its decision regarding measures to be implemented. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. The Magnuson-Stevens Act permits NMFS to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law.

Regulatory Adjustments and Corrections Under Regional Administrator Authority

NMFS removed the annual specifications from the regulatory text and reorganized the layout of the regulations to help streamline the approval of future specifications actions. As a result, this proposed rule includes revisions to the regulatory text that would reorganize and condense references to annual scallop allocations and possession limits. These adjustments do not make any substantive changes to the implications of the current regulations and would allow future specifications-setting actions to be implemented sooner by avoiding the need to make extensive regulatory changes for each specifications-setting action. In addition to saving time during rulemaking, this adjustment also avoids the need to develop follow-up correcting amendments when NMFS inadvertently and incorrectly updates regulations. NMFS proposes these changes consistent with section 305(d) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act.

To accommodate the specifications process and simplify the scallop regulations NMFS proposes the following changes to regulatory text: Revising the definitions in section 648.2 to remove the unnecessary distinction between Rotational Closed Areas and Scallop Access Areas; consolidating all of the allocations into a single table in section 648.53; condensing the explanations of OFL, ABC, and ACL into section 648.53 which creates a single section dedicated to all of the catch limits (the current regulations have this information repeated again at § 648.55 which we removed); removing sections 648.57 and 648.58 and integrating them into sections 648.59 and 648.60 to describe the scallop access area program and remove the unnecessary distinction between Rotational Closed Areas and Scallop Access Areas; and moving access area program requirements currently in § 648.60 to § 648.59 to provide a dedicated section to access area program requirements (§ 648.59) and a dedicated section to listing all of the scallop access areas (§ 648.60).

Under this same section 305(d) authority, this action also proposes the following revisions to the regulatory text, unrelated to the addition of a specifications process, to address text that is unnecessary, outdated, unclear, or NMFS could otherwise improve: Revising §§ 648.14(i)(2)(vi)(B) and 648.14(i)(3)(v)(E) to clarify in the prohibitions a requirement currently in § 648.58(e) that vessels cannot transit the Closed Area II Rotational Area, the Closed Area II Extension Rotational Area, or the Elephant Trunk Closed Area unless there is a compelling safety reason for transiting the area; adding back in text, at § 648.53(c), regarding limited access accountability measures that was unintentionally removed during Framework Adjustment 27 to the Scallop FMP (81 FR 26727, May 4, 2016); updating a reference in section § 648.54 regarding the state waters exemption program that was unintentionally overlooked in Framework Adjustment 26 to the Scallop FMP (80 FR 22119, April 21, 2015); revising § 648.56(f) to reflect a change that scallop research set-aside (RSA) can be harvested to accommodate the proposed change in fishing year (changing from May 31 to June 30 of the fishing year subsequent to the fishing year in which the set-aside is awarded); revising § 648.62(c) to clarify that NGOM vessels must declare either a Federal NGOM trip or a state-waters NGOM trip on their VMS units when declaring a scallop trip.

Finally, due to the extensive regulatory changes in this action we are updating references throughout the scallop regulations that will change based on the proposed regulatory adjustments. We have included a summary of all of the proposed regulatory changes in this proposed rule in Table 1.

TABLE 1—SUMMARY OF PROPOSED REGULATORY CHANGES TO 50 CFR PART 648

Section	Current title	Proposed title	Type of changes	Summary of changes
648.2	Definitions	Same	Amendment 19 & Regulatory Streamlining.	Changes address the new scallop fishing year and remove the unnecessary distinction between Rotational Closed Areas and Scallop Access Areas.
648.10	VMS and DAS requirements for vessel owners/operators.	Same	Regulatory Streamlining.	Changes update references that will change based on proposed regulatory adjustments to other sections.
648.14	Prohibitions	Same	Regulatory Streamlining & Corrections.	Changes update references that will change based on proposed regulatory adjustments to other sections. Clarification that vessels cannot transit the Closed Area II Rotational Area, the Closed Area II Extension Rotational Area, or the Elephant Trunk Closed Area.
648.51	Gear and crew restrictions.	Same	Regulatory Streamlining.	Changes update references that will change based on proposed regulatory adjustments to other sections.
648.52	Possession and landing limits.	Same	Regulatory Streamlining.	Changes update references that will change based on proposed regulatory adjustments to other sections.
648.53	Acceptable biological catch, annual catch limits, annual catch targets, DAS allocations, and individual fishing quotas.	Overfishing limit, acceptable biological catch, annual catch limits, annual catch targets, DAS allocations, and individual fishing quotas.	Amendment 19, Regulatory Streamlining, & Corrections.	Changes address Amendment 19 specifications process, condense allocations into a single table, and condense the explanations of OFL, ABC, and ACL into a single section. The current regulations have this information repeated again at § 648.55. Also, we add back in text, at § 648.53(c), regarding limited access accountability measures that was unintentionally removed during scallop Framework Adjustment 27.
648.54	State waters exemption	Same	Corrections	The change to this section updates an old reference that should have occurred during scallop Framework Adjustment 26 rulemaking but was inadvertently overlooked.
648.55	Framework adjustments to management measures.	Specifications and framework adjustments to management measures.	Amendment 19 & Regulatory Streamlining.	Changes to this section address Amendment 19 changes, but also fine-tune previous regulations and remove repetitive regulations that are now consolidated into § 648.53, specifically the explanation of OFL, ABC, and ACL.
648.56	Scallop research	Same	Amendment 19 & Regulatory Streamlining.	Changes update references that will change based on other proposed regulatory adjustments and support the Amendment 19 alternative to change the fishing year to April 1. Changes would push back the 90-day RSA carryover timeframe by a month (from May 31 to June 30) to accommodate the change in fishing year.
648.57	Sea scallop area rotation program.	Reserved	Amendment 19 & Regulatory Streamlining.	Changes remove unnecessary distinction between rotational closed areas and scallop access areas, clarifying that rotational areas can be open or closed as determined through the specifications or framework process. Consolidates the regulations formerly in this section into § 648.59.
648.58	Rotational Closed Areas.	Reserved	Amendment 19 & Regulatory Streamlining.	Changes remove unnecessary distinction between rotational closed areas and scallop access areas clarifying that rotational areas can be open or closed, as determined through the specifications or framework process. Consolidating the regulations formerly in this section into §§ 648.59 and 648.60.
648.59	Sea Scallop Access Areas.	Sea scallop rotational area management program and access area program requirements.	Amendment 19 & Regulatory Streamlining.	There are no substantial changes to current regulatory text in this section; portions of this section are reorganized to incorporate regulations formerly in §§ 648.57 and 648.58. Also, the access area program requirements were moved to this section from § 648.60 for clarity.

TABLE 1—SUMMARY OF PROPOSED REGULATORY CHANGES TO 50 CFR PART 648—Continued

Section	Current title	Proposed title	Type of changes	Summary of changes
648.60	Sea scallop access area program requirements.	Sea scallop rotational areas.	Amendment 19 & Regulatory Streamlining.	There are no substantial changes to current regulatory text in this section; portions of this section are reorganized to incorporate regulations formerly in § 648.58. Also, the access area program requirements were moved from this section to § 648.59 for clarity.
648.62	Northern Gulf of Maine (NGOM) Management Program.	Same	Amendment 19, Regulatory Streamlining, & Corrections.	Changes to this section support the specifications process and update references that will change based on other proposed regulatory adjustments. Also, changes clarify that NGOM vessels must declare either a Federal NGOM trip or a state-waters NGOM trip.
648.63	General category Sectors and harvesting cooperatives.	Same	Regulatory Streamlining.	Changes update references that will change based on proposed regulatory adjustments to other sections.
648.64	Yellowtail flounder sub-ACLs and AMs for the scallop fishery.	Same	Amendment 19	Changes to this section are proposed to support the Amendment 19 alternative to change the fishing year to April 1.
648.65	Windowpane flounder sub-ACL and AM for the scallop fishery.	Same	Amendment 19	Changes to this section are proposed to support the Amendment 19 alternative to change the fishing year to April 1.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the FMP, other provisions of the MSA, and other applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

This proposed rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id* at 81194.

The Council conducted an evaluation of the potential impacts of the proposed measures in conjunction with this EA. There were 313 vessels that obtained full-time limited access permits in 2015, including 250 dredge, 52 small-dredge, and 11 scallop trawl permits. In the same year, there were also 34 part-time limited access permits in the sea scallop fishery. No vessels were issued occasional scallop permits. NMFS issued 220 limited access general category (LAGC) IFQ permits in 2014 and 128 of these vessels actively fished for scallops that year (the remaining permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History).

Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those affected by the proposed action. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. For the purposes of this analysis, "ownership entities" are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an "ownership entity." For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one "ownership entity" that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate "ownership entity" for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2014 permits and contains average gross sales associated with those permits for calendar years 2012 through 2014. When adjusted for calendar year, there were 166 distinct ownership entities for the limited access fleet and 106 distinct ownership entities for the LAGC IFQ fleet in 2014. All of the entities directly regulated by this regulatory action are shellfish commercial fishing businesses. Under the NMFS size standards, 159 of the limited access distinct ownership entities and 104 of the LAGC IFQ entities were categorized as small. The remaining 7 of the limited access and 2 of the LAGC IFQ entities were categorized as large entities.

Amendment 19 proposes to establish a specification process so that allocations would not be tied only to actions that tend to have longer development and implementation timelines (*i.e.,* frameworks or amendments) and change the start of the fishing year from March 1 to April 1. Developing a specifications process would eliminate the need for a framework adjustment to set annual allocations for the scallop fishery. This will reduce the delays in implementation and make it possible to integrate the updated survey data into allocation estimates. Similarly, changing the start of the fishing year from March 1 to April 1 would reduce the time lag between the fishing year and the time when the survey data become available. This would improve accuracy of catch limits for the access areas, and align the implementation time better with the fishing year, thus reducing the uncertainties for the small businesses in the scallop fishery in making their business plans for the fishing year.

Adjusting the fishing year back 1 month will, however, require a change in the business plans of the scallop fishermen. Currently, the fishing year begins on March 1, at a time when meat-weight of scallops begins to increase and a higher yield per unit effort could be obtained from scallop fishing. If the landings are postponed to the following March (*i.e.*, the last month of the fishing year, under this alternative) because of the change in the start of the fishing year to April 1, and if the resource and market conditions turn out to be less favorable than they were expected a year ago—for example, because of a decline scallop prices or a decline catch per-unit effort— the scallop fishermen will incur a loss from not using them in earlier months. This loss is not expected to be high, however, taking into consideration that some of the effort normally occurred in March could be shifted to other months when meat weights are even higher.

For example, starting the fishing year in April could lead to increased effort in this month if fishermen would want to postpone a smaller proportion of their allocations to the following March due to uncertainties. However, an increase in scallop landings in April (compared to the earlier years when the start of the fishing year was in March) could also have some beneficial impacts compared to No Action because meat weights are larger in April compared to March. Although the average price of scallops could decline somewhat with increased landings in April, the higher prices associated with larger size scallops are expected to outweigh negative impacts on average prices and revenues.

In addition, present regulations allow a vessel to carry over 10 days-at-sea to the next fishing year, and this provision could be used if it turns out that the market conditions are not optimal or if there are vessel breakdowns in the following year in March. Other factors, such as constraints on labor due to some crew members working on multiple boats with the reduced landings, especially in the last couple of years, also help spread the effort throughout the fishing year.

In summary, starting the fishing year a month later will require some change in business planning and will create some risks due to reduced predictability of the resource and market conditions in March, a month when yields start improving. Negative impacts associated with this change are expected to be minimal and also are expected to decline over time as the vessel-owners gain experience with the new fishing year and learn to adjust their business plans more efficiently to the new conditions. The proposed measures are expected to result in positive economic impacts on regulated entities by improving scallop yield over the long-term, increase revenues, and reduce the business costs associated with constantly changing regulations outweighing any negative impacts associated with the change in fishing year.

Because this rulemaking will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 10, 2016.

Paul Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Amend § 648.2 by:

■ a. Revising the definitions of "Fishing year", "Open areas", and "Permit year";

■ b. Removing the definitions for ""Rotational Closed Area" and "Sea Scallop Access Area"; and

■ c. Adding definitions for "Sea Scallop Access Area, Scallop Access Area, or Access Area" and "Sea Scallop Rotational Area, Scallop Rotational Area, or Rotational Area" in alphabetical order.

The revisions and additions read as follows:

§ 648.2 Definitions.

* * * * *

Fishing year means:

(1) For the Atlantic deep-sea red crab fishery, from March 1 through the last day of February of the following year.

(2) Beginning in 2018, for the Atlantic sea scallop fishery, from April 1 through March 31 of the following year (for 2017, the Atlantic sea scallop fishing year will be from March 1, 2017, through March 31, 2018).

(3) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.

(4) For the tilefish fishery, from November 1 through October 31 of the following year.

(5) For all other fisheries in this part, from January 1 through December 31.

* * * * *

Open areas, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Sea Scallop Rotational Areas specified in §§ 648.59 and 648.60, EFH Closed Areas specified in § 648.61, or the Northern Gulf of Maine Management Area specified in § 648.62.

* * * * *

Permit year means:

(1) For the Atlantic deep-sea red crab fishery, from March 1 through the last day of February of the following year;

(2) Beginning in 2018, for the Atlantic sea scallop fishery, from April 1 through the last day of March of the following year (for 2017, the Atlantic sea scallop permit year will be from March 1, 2017, through March 31, 2018);

(3) For all other fisheries in this part, from May 1 through April 30 of the following year.

* * * * *

Sea Scallop Access Area, Scallop Access Area, or *Access Area,* with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as a sea scallop rotational area that is open to the scallop fishery in a given fishing year.

* * * * *

Sea Scallop Rotational Area, Scallop Rotational Area, or *Rotational Area,* with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as part of the Sea Scallop Rotational Management Program. A rotational area may be closed or open to the scallop fishery in a given fishing year. A rotational area open to the scallop fishery is termed a Sea Scallop Access Area and has area-specific management measures that are designed to control fishing effort and mortality on only the portion of the scallop resource within the area. Such measures are not applicable in Open Areas defined above.

* * * * *

■ 3. In § 648.10, paragraph (b)(2), the first sentence to the introductory text of paragraph (f)(4)(i), the introductory text to paragraph (h), and paragraph (h)(8)(ii) are revised to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(2) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.59;

* * * * *

(f) * * *

(4) * * *

(i) The owner or operator of a limited access or LAGC IFQ vessel that fishes for, possesses, or retains scallops, and is not fishing under a NE Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.59(b)(9), and trips accompanied by a NMFS-approved observer. * * *

* * * * *

(h) *Call-in notification.* The owner of a vessel issued a limited access monkfish permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (e) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.59, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (i) of this section, are subject to the following requirements:

* * * * *

(8) * * *

(ii) A vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops, unless otherwise specified in § 648.59(d)(2);

* * * * *

■ 4. Amend § 648.14 by:

■ a. Revising paragraphs (i)(1)(vi), (i)(2)(ii)(B)(*7*), (i)(2)(iii)(B), (i)(2)(iii)(C), (i)(2)(iv)(B), the introductory text to (i)(2)(vi), and paragraph (i)(2)(vi)(A);

■ b. Add paragraph (i)(2)(vi)(B); and

■ c. Revise paragraphs (i)(2)(vi)(D), (i)(3)(iv)(A), (i)(3)(v), and (i)(4)(i)(A).

The revisions and additions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(vi) *Closed area requirements*—(A) *EFH Closed Areas.* (*1*) Fish for scallops in, or possess or land scallops from, the EFH Closed Areas specified in § 648.61.

(*2*) Transit or enter the EFH Closure Areas specified in § 648.61, except as provided by § 648.61(b).

(B) *Scallop Rotational Areas.* (*1*) Fish for scallops in, or possess or land scallops from, the Scallop Rotational Areas closed to the scallop fishery through the specifications or framework adjustment processes specified in § 648.55.

(*2*) Transit or enter the Scallop Rotational Areas, except as provided by § 648.59(a) or (b).

* * * * *

(2) * * *

(ii) * * *

(B) * * *

(*7*) Fish in a Sea Scallop Access Area, as described in § 648.60, with more persons on board the vessel than the number specified in § 648.51(c) or § 648.51(e)(3)(i), unless otherwise authorized by the Regional Administrator.

* * * * *

(iii) * * *

(B) Fish for, possess, or land more than 50 bu (17.62 hL) of in-shell scallops once inside the VMS Demarcation Line on or by a vessel that, at any time during the trip, fished in or transited any area south of 42°20′ N. lat; or fished in any Sea Scallop Area Access Program specified in § 648.59, except as provided in the state waters exemption, as specified in § 648.54.

(C) Fish for, possess, or land per trip, at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(3) when properly declared into the Sea Scallop Area Access Program as described in § 648.59.

* * * * *

(iv) * * *

(B) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one Access Area trip exchanges as specified in § 648.59(b)(3)(ii).

* * * * *

(vi) *Scallop rotational area management program and scallop access area program requirements.* (A) Fail to comply with any of the provisions and specifications of § 648.59.

(B) Transit the Closed Area II Rotational Area or the Closed Area II Extension Rotational Area, as defined § 648.60(d) and (e), respectively, or the Elephant Trunk Closed Area, as defined in § 648.60(b), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops outside the boundaries of a Sea Scallop Access Area by a vessel that is declared into the Area Access Program as specified in § 648.59.

* * * * *

(3) * * *

(iv) * * *

(A) Fail to comply with any of the VMS requirements specified in §§ 648.10, 648.59, or 648.62.

* * * * *

(v) *Scallop rotational area management program and scallop access area program requirements.* (A) Fail to comply with any of the requirements specified in § 648.59.

(B) Declare into or leave port for an area specified in § 648.60 after the effective date of a notification published in the **Federal Register** stating that the number of LAGC trips have been taken, as specified in § 648.59.

(C) Fish for or land per trip, or possess in excess of 40 lb (18.1 kg) of shucked scallops at any time in or from any Sea Scallop Access Area specified at § 648.60, unless declared into the Sea Scallop Access Area Program.

(D) Fish for, possess, or land scallops in or from any Sea Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

(E) Transit the Closed Area II Rotational Area or the Closed Area II Extension Rotational Area, as defined § 648.60(d) and (e), respectively, or the Elephant Trunk Closed Area, as defined in § 648.60(b), unless there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

(4) * * *

(i) * * *

(A) Fish for or land per trip, or possess at any time, in excess of 600 lb (272.2 kg) of shucked, or 75 bu (26.4 hL) of in-shell scallops per trip, or 100 bu (35.2 hL) in-shell scallops seaward of the VMS Demarcation Line, unless the vessel is carrying an observer as specified in § 648.11 and an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.59(d).

* * * * *

■ 5. In § 648.51, paragraphs (b)(1), (b)(3)(i), the introductory text to paragraph (c), and paragraph (f)(1) are revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) * * *

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m), measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section, in § 648.59(g)(2), and the scallop dredge exemption areas specified in § 648.80. However, component parts may be on board the vessel such that they do not conform with the definition of "dredge or dredge gear" in § 648.2, *i.e.,* the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

* * * * *

(3) * * *

(i) Unless otherwise required under the Sea Scallop Area Access program specified in § 648.59(b)(6), the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

* * * * *

(c) *Crew restrictions.* A limited access vessel participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, and a limited access vessel participating in the Sea Scallop Area Access Program as specified in § 648.59 may have no more than eight people aboard, including the operator, when not docked or moored in port, except as follows:

* * * * *

(f) * * *

(1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.59, may not fish for scallops with a trawl net in the Closed Area 1, Closed Area II, Closed Area II Extension, and Nantucket Lightship Rotational Areas specified in § 648.60.

* * * * *

■ 6. In § 648.52, paragraphs (d), (f), and (g) are revised to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(d) Owners or operators of vessels with a limited access scallop permit that have properly declared into the Sea Scallop Area Access Program as described in § 648.59 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(5).

* * * * *

(f) A limited access vessel or an LAGC vessel that is declared into the Sea Scallop Area Access Program as described in § 648.59, may not possess more than 50 bu (17.6 hL) or 75 bu (26.4 hL), respectively, of in-shell scallops outside of the Access Areas described in § 648.60.

(g) *Possession limit to defray the cost of observers for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, up to 1 day's allowance of the possession limit allocated to limited access vessels, as established by the Regional Administrator in accordance with § 648.59(d), provided the observer set-aside specified in § 648.59(d)(1) has not been fully utilized. For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit to defray the cost of an observer would be 180 lb (82 kg) per trip, regardless of trip length.

■ 7. In § 648.53, the section heading and paragraphs (a), (b), (c), (d), (e), (g)(1), the introductory text to (h)(2), paragraphs (h)(2)(i), (h)(2)(v)(B), (h)(3)(i), (h)(3)(ii)(A), (h)(5)(i), and (h)(5)(ii)(A) are revised to read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

(a) The following determinations and allocations for the sea scallop rotational areas are defined as follows and shall be established through the specifications or framework adjustment process:

(1) *OFL.* OFL shall be based on an updated scallop resource and fishery assessment provided by either the Scallop PDT or a formal stock assessment. OFL shall include all sources of scallop mortality and shall include an upward adjustment to account for catch of scallops in state waters by vessels not issued Federal scallop permits. The fishing mortality rate (F) associated with OFL shall be the threshold F, above which overfishing is occurring in the scallop fishery. The F associated with OFL shall be used to derive specifications for ABC, ACL, and ACT, as defined in paragraph (a) of this section.

(2) The specification of ABC, ACL, and ACT shall be based upon the following overfishing definition: The F shall be set so that in access areas, averaged for all years combined over the period of time that the area is closed and open to scallop fishing as an access area, it does not exceed the established F threshold for the scallop fishery; in open areas it shall not exceed the F threshold for the scallop fishery; and for access and open areas combined, it is set at a level that has a 75-percent probability of remaining below the F associated with ABC, as defined in paragraph (a)(3) of this section, taking into account all sources of fishing mortality in the limited access and LAGC fleets of the scallop fishery.

(3) *Overall ABC/ACL.* The overall ABC for sea scallop fishery shall be the catch level that has an associated F that has a 75-percent probability of remaining below the F associated with OFL. The overall ACL shall be equal to the ABC for the scallop fishery, minus discards (an estimate of both incidental and discard mortality). The ABC/ACL, after the discards and deductions specified in paragraph (a)(4) of this section are removed, shall be divided as sub-ACLs between limited access vessels, limited access vessels that are fishing under a LAGC permit, and LAGC vessels as defined in paragraphs (a)(5) and (6) of this section, after the deductions outlined in paragraph (a)(4) of this section.

(4) *Deductions from ABC/ACL.* Incidental catch, as defined in paragraph (a)(7) of this section, shall be removed from ABC/ACL. One percent of ABC/ACL shall be removed from ABC/ACL for observer set-aside. Scallop catch equal to the value specified in § 648.56(d) shall be removed from ABC/ACL for research set-aside. These deductions for incidental catch, observer set-aside, and research set-aside, shall be made prior to establishing sub-ACLs for the limited access and LAGC fleets, as specified in paragraphs (a)(5) and (6) of this section.

(5) *Limited access fleet sub-ACL and sub-ACT*—(i) *Limited access fleet sub-ACL.* After applying the deductions as specified in paragraph (a)(4) of this section, the limited access scallop fleet shall be allocated a sub-ACL equal to 94.5 percent of the ABC/ACL.

(ii) *Limited access fleet sub-ACT.* The ACT for the limited access fishery shall be set at a level that has an associated F with a 75-percent probability of remaining below the F associated with ABC/ACL.

(6) *LAGC IFQ fleet sub-ACL and sub-ACT*—(i) *LAGC IFQ fleet sub-ACL.* After applying the deductions as specified in paragraph (a)(4) of this section, the LAGC IFQ fleet shall be allocated a sub-ACL equal to 5.5 percent of the ABC/ACL, so that 5 percent of ABC/ACL is allocated to the LAGC fleet of vessels that do not also have a limited access scallop permit, and 0.5 percent of the ABC/ACL is allocated to the LAGC fleet of vessels that have limited access scallop permits. This specification of sub-ACLs shall not account for catch reductions associated with the application of AMs or adjustment of the sub-ACL as a result of the limited access AM exception as specified in paragraph (c)(1) of this section.

(ii) *LAGC IFQ fleet sub-ACT.* The LAGC IFQ fishery sub-ACT shall be equal to the LAGC IFQ fishery's sub-ACL. The sub-ACT for the LAGC IFQ fishery for vessels issued only a LAGC IFQ scallop permit shall be equal to 5 percent of the ABC/ACL specified in paragraph (a)(3) of this section, after applying the deductions as specified in paragraph (a)(4) of this section. The sub-ACT for the LAGC IFQ fishery for vessels issued both a LAGC IFQ scallop permit and a limited access scallop permit shall be 0.5 percent of the ACL specified in paragraph (a)(3) of this section, after applying the deductions as specified in paragraph (a)(4) of this section.

(7) *Scallop incidental catch target TAC.* The annual incidental catch target TAC is the catch available for harvest for vessels with incidental catch scallop permits. This incidental catch target will be removed from the ABC/ACL defined in paragraph (a)(3) of this section prior to establishing the limited access and LAGC IFQ sub-ACLs and sub-ACTs defined in paragraphs (a)(5) and (6) of this section.

(8) The following catch limits will be effective for the 2016 and 2017 fishing years:

SCALLOP FISHERY CATCH LIMITS

Catch limits	2016 (mt)	2017 (mt)*
Overfishing Limit	68,418	68,418
Acceptable Biological Catch/ACL (discards removed)	37,852	37,852
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	379	379
ACL for fishery	36,884	36,884
Limited Access ACL	34,855	34,855
LAGC ACL	2,029	2,029
LAGC IFQ	1,845	1,845
Limited Access with LAGC IFQ	184	184
Limited Access ACT	18,290	18,290

*The catch limits for the 2017 fishing year are subject to change through a future specifications action or framework adjustment.

(b) *DAS specifications and allocations.* DAS specifications and allocations for limited access scallop trips in open areas are defined as follows and shall be specified through the specifications or framework adjustment processes defined in § 648.55, as follows:

(1) *DAS allocations.* DAS allocations shall be determined by distributing the portion of the limited access ACT defined in paragraph (a)(3) of this section, as reduced by access area allocations defined in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area landings per unit effort (LPUE) projected through the specifications or framework adjustment processes used to set annual allocations.

(2) *Assignment to DAS categories*—(i) Limited access vessels shall be categorized as full-time, part-time, or occasional. Allocations for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS allocations, respectively.

(ii) Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(3) The DAS allocations for limited access scallop vessels for fishing years 2016 and 2017 are as follows:

SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2016	2017*
Full-Time	34.55	34.55
Part-Time	13.82	13.82
Occasional	2.88	2.88

*The DAS allocations for the 2017 fishing year are subject to change through a future specifications action or framework adjustment.

(c) *Accountability measures (AM) for limited access vessels.* Unless the limited access AM exception is implemented in accordance with the provision specified in paragraph (c)(1) of this section, if the limited access sub-ACL defined in paragraph (a)(5) of this section is exceeded for the applicable fishing year, the DAS for each limited access vessel shall be reduced by an amount equal to the amount of landings in excess of the sub-ACL divided by the applicable LPUE for the fishing year in which the AM will apply as projected by the specifications or framework adjustment process specified in § 648.55, then divided by the number of scallop vessels eligible to be issued a full-time limited access scallop permit. For example, assuming a 300,000-lb (136-mt) overage of the limited access fishery's sub-ACL in 2011, an open area LPUE of 2,500 lb (1.13 mt) per DAS in 2012, and 313 full-time vessels, each full-time vessel's DAS for 2012 would be reduced by 0.38 DAS (300,000 lb (136 mt)/2,500 lb (1.13 mt) per DAS = 120 lb (0.05 mt) per DAS/313 vessels = 0.38 DAS per vessel). Deductions in DAS for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS deduction, respectively, as calculated pursuant to paragraph (b)(2) of this section. The AM shall take effect in the fishing year following the fishing year in which the overage occurred. For example, landings in excess of the limited access fishery's sub-ACL in fishing year 2011 would result in the DAS reduction AM in fishing year 2012. If the AM takes effect, and a limited access vessel uses more open area DAS in the fishing year in which the AM is applied, the vessel shall have the DAS used in excess of the allocation after applying the AM deducted from its open area DAS allocation in the subsequent fishing year. For example, a vessel initially allocated 32 DAS in 2011 uses all 32 DAS prior to application of the AM. If, after application of the AM, the vessel's DAS allocation is reduced to 31 DAS, the vessel's DAS in 2012 would be reduced by 1 DAS.

(1) *Limited access AM exception.* If NMFS determines that the fishing mortality rate associated with the limited access fleet's landings in a fishing year is less than 0.34, the AM specified in paragraph (c) of this section shall not take effect. The fishing mortality rate of 0.34 is the fishing mortality rate that is one standard deviation below the fishing mortality rate for the scallop fishery ACL, currently estimated at 0.38.

(2) *Limited access fleet AM and exception provision timing.* The Regional Administrator shall determine whether the limited access fleet

exceeded its sub-ACL defined in paragraph (a)(5) of this section by July of the fishing year following the year for which landings are being evaluated. On or about July 1, the Regional Administrator shall notify the New England Fishery Management Council of the determination of whether or not the sub-ACL for the limited access fleet was exceeded, and the amount of landings in excess of the sub-ACL. Upon this notification, the Scallop Plan Development Team (PDT) shall evaluate the overage and determine if the fishing mortality rate associated with total landings by the limited access scallop fleet is less than 0.34. On or about September 1 of each year, the Scallop PDT shall notify the Council of its determination, and the Council, on or about September 30, shall make a recommendation, based on the Scallop PDT findings, concerning whether to invoke the limited access AM exception. If NMFS concurs with the Scallop PDT's recommendation to invoke the limited access AM exception, in accordance with the APA, the limited access AM shall not be implemented. If NMFS does not concur, in accordance with the APA, the limited access AM shall be implemented as soon as possible after September 30 each year.

(d) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused open area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total open area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in open areas. Carry-over DAS are accounted for in setting the sub-ACT for the limited access fleet, as defined in paragraph (a)(5)(ii) of this section. Therefore, if carry-over DAS result or contribute to an overage of the ACL, the limited access fleet AM specified in paragraph (c) of this section would still apply, provided the AM exception specified in paragraph (c)(1) of this section is not invoked.

(e) *Accrual of DAS.* All DAS fished shall be charged to the nearest minute. A vessel carrying an observer and authorized to be charged fewer DAS in Open Areas based on the total available DAS set aside under paragraph (g) of this section shall be charged at a reduced rate as specified in paragraph (g)(1) of this section.

* * * * *

(g) * * *

(1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL defined in paragraph (a)(3) of this section shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. This observer set-aside is specified through the specifications or framework adjustment process defined in § 648.55.

* * * * *

(h) * * *

(2) *Calculation of IFQ.* The ACL allocated to IFQ scallop vessels, and the ACL allocated to limited access scallop vessels issued IFQ scallop permits, as defined in paragraph (a)(4) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

(i) *Individual fishing quota.* The IFQ for an IFQ scallop vessel shall be the vessel's contribution percentage as specified in paragraph (h)(2)(iii) of this section and determined using the steps specified in paragraph (h)(2)(ii) of this section, multiplied by the ACL allocated to the IFQ scallop fishery, or limited access vessels issued an IFQ scallop permit, as defined in paragraph (a)(4) of this section.

* * * * *

(v) * * *

(B) For accounting purposes, the combined total of all vessels' IFQ carry-over shall be added to the LAGC IFQ fleet's applicable sub-ACL for the carry-over year. Any IFQ carried over that is landed in the carry-over fishing year shall be counted against the sub-ACL defined in paragraph (a)(6) of this section, as increased by the total carry-over for all LAGC IFQ vessels, as specified in this paragraph (h)(2)(v)(B). IFQ carry-over shall not be applicable to the calculation of the IFQ cap specified in paragraph (h)(3)(i) of this section and the ownership cap specified in paragraph (h)(3)(ii) of this section.

* * * * *

(3) * * *

(i) *IFQ scallop vessel IFQ cap.* (A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section. All scallops that have been allocated as part of the original IFQ allocation or transferred to a vessel during a given fishing year shall be counted towards the vessel cap.

(C) A vessel initially issued a 2008 IFQ scallop permit or confirmation of permit history, or that was issued or renewed a limited access scallop permit or confirmation of permit history for a vessel in 2009 and thereafter, in compliance with the ownership restrictions in paragraph (h)(3)(i)(A) of this section, is eligible to renew such permit(s) and/or confirmation(s) of permit history, regardless of whether the renewal of the permit or confirmations of permit history will result in the 2.5-percent IFQ cap restriction being exceeded.

(ii) * * *

(A) For any vessel acquired after June 1, 2008, a vessel owner is not eligible to be issued an IFQ scallop permit for the vessel, and/or a confirmation of permit history, and is not eligible to transfer IFQ to the vessel, if, as a result of the issuance of the permit and/or confirmation of permit history, or IFQ transfer, the vessel owner, or any other person who is a shareholder or partner of the vessel owner, will have an ownership interest in more than 5 percent of the sub-ACL allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section.

* * * * *

(5) * * *

(i) *Temporary IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may temporarily transfer (*e.g.*, lease) its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ, once temporarily transferred, cannot be temporarily transferred again to another vessel. IFQ can be temporarily transferred more than once (*i.e.,* re-transferred). For example, if a vessel temporarily transfers IFQ to a vessel, the transferee vessel may re-transfer any portion of that IFQ to another vessel. There is no limit on how many times IFQ can be re-transferred in a fishing year. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(ii) * * *

(A) Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel. Any such transfer cannot be limited in duration and is permanent as to the transferee, unless the IFQ is subsequently permanently transferred to another IFQ scallop vessel. IFQ may be permanently transferred to a vessel and then be re-transferred (temporarily transferred (*i.e.,* leased) or permanently transferred) by such vessel to another vessel in the same fishing year. There is no limit on how many times IFQ can be re-transferred in a fishing year.

* * * * *

■ 8. In § 648.54, paragraph (e) is revised to read as follows:

§ 648.54 State waters exemption.

* * * * *

(e) *Notification requirements.* Vessels fishing under the exemptions specified in paragraph (b), (c), and/or (d) of this section must notify the Regional Administrator in accordance with the provisions of § 648.10(f).

* * * * *

■ 9. Amend § 648.55 by:

■ a. Revising the section heading and paragraph (a);

■ b. Removing and reserving paragraph (b);

■ c. Revising paragraph (c);

■ d. Removing and reserving paragraph (e);

■ e. Revising the introductory text to paragraph (f) and paragraph (f)(38).

The revisions read as follows:

§ 648.55 Specifications and framework adjustments to management measures.

(a) *Specifications.* (1) The Scallop Plan Development Team (PDT) shall meet at least every two years to assess the status of the scallop resource and to develop and recommend the following specifications for a period of up to 2 years, as well as second or third-year default measures, for consideration by the New England Fishery Management Council's Atlantic Sea Scallop Oversight Committee and Advisory Panel: OFL, overall ABC/ACL, sub-ACLs, sub-ACTs, DAS open area allocations, possession limits, modifications to rotational area management (*e.g.,* schedule, rotational closures and openings, seasonal restrictions, modifications to boundaries, etc.), access area limited access poundage allocations and LAGC IFQ fleet-wide trip allocations, annual incidental catch target TAC, and NGOM TAC.

(2) Based on the PDT recommendations and any public comments received, the Atlantic Sea Scallop Oversight Committee shall recommend appropriate specifications to the New England Fishery Management Council.

(3) The Council shall review these recommendations and, after considering public comments, shall recommend appropriate specifications for up to 2 years, as well as second or third-year default measures, to NMFS. NMFS shall approve, disapprove, or partially approve the specifications recommended by the Council and publish the approved specifications in the **Federal Register** in accordance with the APA.

(4) The PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report at least every two years that provides the information and analysis needed to evaluate potential management adjustments. The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted.

(5) The PDT will meet at least once during the interim years to review the status of the stock relative to the overfishing definition if information is available to do so. If the Council determines, based on information provided by the PDT or other stock-related information, that the approved specifications should be adjusted during the 2-year time period, it can do so through the same process outlined in paragraphs (a)(2) through (4) of this section during the interim year.

(6) Rotational area management guidelines. The Council's development of rotational area management adjustments shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Rotational Areas where the projected annual change in scallop biomass is less than 15 percent.

(7) Second and third-year default specifications. The specifications action shall include default specifications that shall be effective in the second year after 1-year specifications and the third year after the 2-year specifications expire until replaced by the measures included in the next specifications action. If the specifications action is not published in the **Federal Register** with an effective date on or before April 1, the following year's default specifications shall be effective beginning April 1 of each fishing year until any new specifications action is implemented and made effective during the second or third year, or for the entire fishing year if the specifications action is not completed or is not implemented by NMFS during the following year. The specifications action shall specify the measures necessary to address inconsistencies between specifications and default allocations for the period after April 1 but before the specifications action is implemented for that year. The default specifications, if implemented, shall remain in effect until they are revised through a subsequent specifications action.

* * * * *

(c) *OFL, overall ABC/ACL, sub-ACLs, and sub-ACTs.* The Council shall specify OFL, ABC, ACL, and ACT, as defined in § 648.53, for each year covered under the specifications.

* * * * *

(f) *Framework adjustments.* The Council may at any time initiate a framework adjustment to add or adjust management measures within the Scallop FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP. The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures may include specifications measures specified in paragraph (a) of this section, which must satisfy the criteria set forth § 648.53(a) in order to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis. Other measures that may be changed or implemented through framework action include:

* * * * *

(38) Adjustments to aspects of ACL management, including accountability measures;

* * * * *

■ 10. In § 648.56, paragraphs (a), (d), (f), and (g) are revised to read as follows:

§ 648.56 Scallop research.

(a) At least biennially, in association with the biennial framework process, the Council and NMFS shall prepare and issue an announcement of Federal Funding Opportunity (FFO) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in paragraph (d) of this section and § 648.59(e), provides requirements and instructions for applying for funding of a proposed RSA project, and specifies the date by which applications must be received. The FFO shall be published as soon as possible by NMFS and shall provide the opportunity for applicants to apply for projects to be awarded for 1 or 2 years by allowing applicants to apply for RSA funding for the first year, second year, or both.

* * * * *

(d) Available RSA allocation shall be 1.25 million lb (567 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3) and (4), respectively. Approved RSA projects shall be allocated an amount of scallop pounds that can be harvested in open areas and available access areas. The specific access areas that are open to RSA harvest shall be specified through the framework process as identified in § 648.59(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop pounds needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas

* * * * *

(f) If all RSA pounds awarded to a project cannot be harvested during the applicable fishing year, RSA TAC awarded to that project may be harvested through June 30 of the fishing year subsequent to the fishing year in which the set-aside is awarded.

(g) Vessels conducting research under an approved RSA project may be exempt from crew restrictions specified in § 648.51, seasonal closures of access areas specified in § 648.60, and the restriction on fishing in only one access area during a trip specified in § 648.59(b)(4). The RSA project proposal must list which of these measures for which an exemption is required. An exemption shall be provided by Letter of Authorization issued by the Regional Administrator. RSA compensation fishing trips and combined compensation and research trips are not eligible for these exemptions.

* * * * *

§ 648.57 [Removed and reserved]

■ 11. Remove and reserve § 648.57.

§ 648.58 [Removed and reserved]

■ 12. Remove and reserve § 648.58.

■ 13. Revise § 648.59 to read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

(a) The Sea Scallop Rotational Area Management Program consists of Scallop Rotational Areas, as defined in § 648.2. Guidelines for this area rotation program (*i.e.,* when to close an area and reopen it to scallop fishing) are provided in § 648.55(a)(6). Whether a rotational area is open or closed to scallop fishing in a given year, and the appropriate level of access by limited access and LAGC IFQ vessels, are specified through the specifications or framework adjustment processes defined in § 648.55. When a rotational area is open to the scallop fishery, it is called an Access Area and scallop vessels fishing in the area are subject to the Access Area Program Requirements specified in this section. Areas not defined as Scallop Rotational Areas specified in § 648.60, EFH Closed Areas specified in § 648.61, or areas closed to scallop fishing under other FMPs, are governed by other management measures and restrictions in this part and are referred to as Open Areas.

(1) When a Scallop Rotational Area is closed to scallop fishing, a vessel issued any scallop permit may not fish for, possess, or land scallops in or from the area unless the vessel is transiting pursuant to paragraph (a)(2) of this section. A vessel may fish for species other than scallops within the rotational closed areas, provided the vessel does not fish for, catch, or retain scallops or intend to fish for, catch, or retain scallops. When a Scallop Rotational Area is open to scallop fishing (henceforth referred to as an Access Area), a scallop vessel may not fish for, possess, or land scallops in or from the area unless it is participating in, and complies with the requirements of, the Scallop Access Area Program Requirements defined in paragraphs (b) through (g) of this section or the vessel is transiting pursuant to paragraph (a)(3) of this section.

(2) *Transiting a Closed Scallop Rotational Area.* No vessel possessing scallops may enter or be in the area(s) specified in this section when those areas are closed, as specified through the specifications or framework adjustment processes defined in § 648.55, unless the vessel is transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area or the Closed Area II Extension Scallop Rotational Area, as defined § 648.60(d) and (e), respectively, or the Elephant Trunk Closed Area, as defined in § 648.60(b), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(3) *Transiting a Scallop Access Area.* Any sea scallop vessel that has not declared a trip into the Scallop Area Access Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area or the Closed Area II Extension Scallop Rotational Area, as defined in § 648.60(d) and (e), respectively, or the Elephant Trunk Closed Area, as defined in § 648.60(b) if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

(b) A limited access scallop vessel may only fish in the Scallop Rotational Areas, defined in § 648.60, when the areas are open (*i.e.,* Access Areas), as specified through the specifications or framework adjustment processes defined in § 648.55, subject to any additional restrictions specified in § 648.60, provided the vessel complies with the requirements specified in paragraphs (b)(1) through (b)(9), and (c) through (f) of this section. An LAGC scallop vessel may fish in the Scallop Rotational Areas, defined in § 648.60, when the areas are open (*i.e.,* Access Areas), as specified through the specifications or framework adjustment processes defined in § 648.55, subject to any additional requirements specified in § 648.60, provided the vessel complies with the requirements specified in paragraph (g) of this section.

(1) *VMS.* Each vessel participating in the Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraphs (b)(9) and (f) of this section.

(2) Vessels participating in the Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(f) and vessel notification requirements specified in § 648.11(g) for observer deployment.

(3) *Scallop Access Area Allocations*—(i) *Limited access vessel allocations and possession limits.* (A) Except as provided in paragraph (c) of this section, the specifications or framework adjustment processes defined in § 648.55 determine the total amount of scallops, in weight, that a limited access scallop vessel may harvest from Scallop Access Areas during applicable seasons specified in § 648.60. A vessel may not possess or land in excess of its scallop allocation assigned to specific Scallop Access Areas, unless authorized by the Regional Administrator, as specified in paragraph (d) of this section, unless the vessel owner has exchanged an area-specific scallop allocation with another vessel owner for additional scallop allocation in that area, as specified in paragraph (b)(3)(ii) of this section. A vessel may harvest its scallop allocation on any number of trips in a given fishing year, provided that no single trip exceeds the possession limits specified in the specifications or framework adjustment processes defined in § 648.55, unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section. No vessel declared into the Scallop Access Areas may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Scallop Rotational Area boundaries defined in § 648.60.

(B) The following access area allocations and possession limits for limited access vessels will be effective for the 2016 and 2017 fishing years:

Fishing year	Access area		Permit category		
			Full-time	Part-time	Occasional
2016	Mid-Atlantic Access Area.	Allocation	51,000 lb (23,133 kg)	20,400 lb (9,253 kg)	4,250 lb (1,928 kg).
		Possession limit	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644 kg).
2017* ...	Mid-Atlantic Access Area.	Allocation	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644 kg).
		Possession limit	17,000 lb (57,711 kg)	10,200 lb (4,627 kg)	1,420 lb (644 kg).

*The limited access fishery's access area allocations and possession limits for the 2017 fishing year are subject to change through a future specifications action or framework adjustment.

(ii) *Limited access vessels' one-for-one area access allocation exchanges.* The owner of a vessel issued a limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another Scallop Access Area. These exchanges may only be made for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B) of this section. For example, if the access area trip possession limit for full-time vessels is 17,000 lb (7,711 kg), a full-time vessel may exchange no less than 17,000 lb (7,711 kg), from one access area for no more or less than 17,000 lb (7,711 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(4) *Area fished.* While on a Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from areas outside the Scallop Access Area in which the vessel operator has declared the vessel will fish during that trip, and may not enter or exit the specific declared Scallop Access Area more than once per trip. A vessel on a Scallop Access Area trip may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area as provided for under paragraph (a)(3) of this section.

(5) *NE multispecies possession limits*—(i) *Maximum possession limit of NE multispecies combined.* A vessel owner or operator of a limited access scallop vessel issued a valid NE multispecies permit as specified in § 648.4(a)(1), that has declared into a Scallop Access Area and fishes within the open Scallop Rotational Area boundaries defined in § 648.60, may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, excluding yellowtail flounder, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(1), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (b)(5)(ii) through (iv) of this section.

(ii) *Atlantic cod.* Such vessel may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for personal use only and cannot be not sold, traded, or bartered.

(iii) *Haddock.* Such vessel may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in paragraph (b)(5)(ii) of this section, except that such vessel are prohibited from possessing or landing haddock from January 1 through June 30.

(iv) *Yellowtail flounder.* Such vessel is prohibited from fishing for, possessing, or landing yellowtail flounder.

(6) *Gear restrictions.* (i) The minimum ring size for dredge gear used by a vessel fishing on a Scallop Access Area trip is 4 inches (10.2 cm) in diameter. Dredge or trawl gear used by a vessel fishing on a Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(ii) Vessels fishing in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Scallop Rotational Areas defined in § 648.60 are prohibited from fishing with trawl gear as specified in § 648.51(f)(1).

(7) *Transiting.* While outside a Sea Scallop Access Area (*i.e.,* in open areas) on a Scallop Access Area trip, the vessel must have all fishing gear stowed and not available for immediate use as defined in § 648.2, unless there is a compelling safety reason to be transiting open areas without gear stowed. Regulations pertaining to transiting Scallop Rotational Areas are provided for under paragraph (a)(3) of this section.

(8) *Off-loading restrictions.* The vessel may not offload its catch from a Scallop Access Area trip at more than one location per trip.

(9) *Reporting.* The owner or operator must submit scallop catch reports through the VMS, as specified in § 648.10(f)(4)(i), and limited access scallop access area pre-landing notification forms, as specified in § 648.10(f)(4)(iii).

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Mid-Atlantic Access Area at the end of fishing year 2016, that vessel may harvest 7,000 lb (3,175 kg) from its 2017 fishing year scallop access area allocation during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2017 (March 1, 2017, through April 29, 2018). Unless otherwise specified through the specifications or framework adjustment processes defined in § 648.55, if a Scallop Access Area is not open in the subsequent fishing year, then the unharvested scallop allocation would expire at the end of the fishing year that the scallops were allocated.

(d) *Increase in possession limit to defray costs of observers*—The Regional Administrator may increase the sea scallop possession limit through the specifications or framework adjustment processes defined in § 648.55 to defray costs of at-sea observers deployed on area access trips subject to the limits specified § 648.53(g). An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.*— Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to § 648.56. The amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process.

(f) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as defined in this section, all sea scallop vessels equipped with a VMS unit shall be polled at a minimum of twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs of polling twice per hour.

(g) *Limited Access General Category vessels.* (1) An LAGC scallop vessel may only fish in the scallop rotational areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section, subject to any additional restrictions specified in § 648.60, subject to the possession limit and access area schedule specified in the specifications or framework adjustment processes defined in § 648.55, provided the vessel complies with the requirements specified in paragraphs (b)(1), (b)(2), (b)(6) through (9), (d), (e), (f), and (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Scallop Rotational Areas specified in § 648.60, when open, provided the vessel complies with the requirements specified in § 648.59 and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

(2) *Limited Access General Category Gear restrictions.* An LAGC IFQ scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Access Areas may not exceed 10.5 ft (3.2 m). The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the remaining Scallop Rotational Areas defined in § 648.60 may not exceed 31 ft (9.4 m). Dredge width is measured at the widest point in the bail of the dredge.

(3) *LAGC IFQ Access Area trips.* (i) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips have been or are projected to be taken. All LAGC IFQ access area trips must be taken in the fishing year that they are allocated (*i.e.,* there are no carryover trips). The total number of LAGC IFQ trips in an Access Area is specified in the specifications or framework adjustment processes defined in § 648.55.

(ii) Scallops landed by each LAGC IFQ vessel on an access area trip shall count against the vessel's IFQ.

(iii) Upon a determination from the Regional Administrator that the total number of LAGC IFQ trips in a specified Access Area have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the **Federal Register**, in accordance with the Administrative

Procedure Act. Once this determination has been made, an LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area after the effective date of the notification published in the **Federal Register**.

(iv) *Nantucket Lightship North Sea Scallop Access Area.* (A) From March 1, 2016, through February 28, 2018 (*i.e.,* fishing years 2016 and 2017), a vessel issued an LAGC IFQ scallop permit may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship North Access Area, defined in paragraph (g)(3)(iv)(B) of this section, unless the vessel is participating in, and complying with the requirements of, the area access program defined in this section or the vessel is transiting pursuant to § 648.59(a)(3).

(B) The Nantucket Lightship North Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLNAA1	40°50′ N.	69°00′ W.
NLNAA2	40°30′ N.	69°00′ W.
NLNAA3	40°30′ N.	69°30′ W.
NLNAA4	40°50′ N.	69°30′ W.
NLNAA1	40°50′ N.	69°00′ W.

(v) The following LAGC IFQ access area allocations will be effective for the 2016 and 2017 fishing years:

Scallop rotational area	2016	2017 *
Mid-Atlantic Access Area	2,068	602
Nantucket Lightship North	485	0

* The LAGC IFQ access area trip allocations for the 2017 fishing year are subject to change through a future specifications action or framework adjustment.

(4) *Possession limits*—(i) *Scallops.* A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS, and that has not declared into the Scallop Access Area Program, is prohibited from possessing scallops. An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 may possess scallops up to the possession limit specified in § 648.52(a).

(ii) *Other species.* Unless issued an LAGC scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Rotational Areas specified in § 648.60, and the Nantucket Lightship North Sea Scallop Access Area specified in paragraph (g)(3)(iv) of this section is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i). Such a vessel may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided that it has not declared into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

■ 14. Revise § 648.60 to read as follows:

§ 648.60 Sea Scallop Rotational Areas.

(a) *Mid-Atlantic Scallop Rotational Area.* (1) The Mid-Atlantic Scallop Rotational Area is comprised of the following scallop access areas: The Delmarva Scallop Rotational Area, as defined in paragraph (a)(2) of this section; the Elephant Trunk Scallop Rotational Area, as defined in paragraph (a)(3) of this section; and the Hudson Canyon Scallop Rotational Area, as defined in paragraph (a)(4) of this section.

(2) *Delmarva Scallop Rotational Area.* The Delmarva Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1	38°10′ N.	74°50′ W.
DMV2	38°10′ N.	74°00′ W.
DMV3	37°15′ N.	74°00′ W.
DMV4	37°15′ N.	74°50′ W.
DMV1	38°10′ N.	74°50′ W.

(3) *Elephant Trunk Scallop Rotational Area.* The Elephant Trunk Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETAA1	38°30′ N.	74°20′ W.
ETAA2	38°30′ N.	73°50′ W.
ETAA3	38°40′ N.	73°50′ W.
ETAA4	38°40′ N.	73°40′ W.
ETAA5	38°50′ N.	73°40′ W.
ETAA6	38°50′ N.	73°30′ W.
ETAA7	38°10′ N.	73°30′ W.
ETAA8	38°10′ N.	74°20′ W.
ETAA1	38°30′ N.	74°20′ W.

(4) *Hudson Canyon Scallop Rotational Area.* The Hudson Canyon Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30′ N.	73°10′ W.
H2	39°30′ N.	72°30′ W.
H3	38°30′ N.	73°30′ W.
H4	38°50′ N.	73°30′ W.
H5	38°50′ N.	73°42′ W.
H1	39°30′ N.	73°10′ W.

(b) *Elephant Trunk Closed Area.* The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request).

Point	Latitude	Longitude
ETCA 1	38°50′ N.	74°20′ W.
ETCA 2	38°50′ N.	73°40′ W.
ETCA 3	38°40′ N.	73°40′ W.
ETCA 4	38°40′ N.	73°50′ W.
ETCA 5	38°30′ N.	73°50′ W.
ETCA 6	38°30′ N.	74°20′ W.
ETCA 1	38°50′ N.	74°20′ W.

(c) *Closed Area I Scallop Rotational Area.* (1) The Closed Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request), and so that the line connecting points CAIA3 and CAIA4 is the same as the portion of the western boundary line of Closed Area I, defined in § 648.81(a)(1), that lies between points CAIA3 and CAIA4:

Point	Latitude	Longitude	Note
CAIA1	41°26′ N.	68°30′ W.	
CAIA2	40°58′ N.	68°30′ W.	
CAIA3	40°54.95′ N.	68°53.37′ W.	(1)
CAIA4	41°04′ N.	69°01′ W.	(1)

Point	Latitude	Longitude	Note
CAIA1	41°26′ N.	68°30′ W.	

[1] From Point CAIA3 to Point CAIA4 along the western boundary of Closed Area I, defined in § 648.81(a)(1).

(d) *Closed Area II Scallop Rotational Area.* (1) The Closed Area II Scallop Rotational Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude	Note
CAIIA1	41°00′ N.	67°20′ W.	
CAIIA2	41°00′ N.	66°35.8′ W.	
CAIIA3	41°18.45′ N.	(1)	(2)
CAIIA4	41°30′ N.	(3)	(2)
CAIIA5	41°30′ N.	67°20′ W.	
CAIIA1	41°00′ N.	67°20′ W.	

[1] The intersection of 41°18.45′ N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.45′ N. lat. and 66°24.89′ W. long.

[2] From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada Maritime Boundary.

[3] The intersection of 41°30′ N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°30′ N. lat., 66°34.73′ W. long.

(2) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Rotational Area, defined in paragraph (d)(1) of this section, during the period of August 15 through November 15 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to § 648.59(a).

(e) *Closed Area II Extension Scallop Rotational Area.* The Closed Area II Extension Rotational Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude	Note
CAIIE1	40°30′ N.	67°20′ W.	
CAIIE2	41°00′ N.	67°20′ W.	
CAIIE3	41°00′ N.	66°35.8′ W.	
CAIIE4	41°18.45′ N.	(1)	(2)
CAIIE5	40°30′ N.	(3)	(2)
CAIIE1	40°30′ N.	67°20′ W.	

[1] The intersection of 41°18.45′ N. lat. and the U.S.-Canada Maritime Boundary, approximately 41°18.45′ N. lat. and 66°24.89′ W. long.

[2] From Point CAIIE4 to Point CAIIE5 following the U.S.-Canada Maritime Boundary.

[3] The intersection of 40°30′ N. lat. and the U.S.-Canada Maritime Boundary, approximately, 65°44.34′ W. long.

(f) *Nantucket Lightship Scallop Rotational Area.* (1) The Nantucket Lightship Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLAA1	40°50′ N.	69°30′ W.
NLAA2	40°50′ N.	69°00′ W.
NLAA3	40°33′ N.	69°00′ W.
NLAA4	40°33′ N.	68°48′ W.
NLAA5	40°20′ N.	68°48′ W.
NLAA6	40°20′ N.	69°30′ W.
NLAA1	40°50′ N.	69°30′ W.

■ 15. In § 648.62, paragraphs (a)(3), the introductory text to paragraph (b), paragraph (b)(3), and (c) are revised to read as follows:

§ 648.62 Northern Gulf of Maine (NGOM) Management Program.

(a)* * *

(3) Scallop landings by all vessels issued LAGC IFQ scallop permits and fishing in the NGOM scallop management area shall be deducted from the NGOM scallop total allowable catch specified in the specifications or framework adjustment processes defined in § 648.55. Scallop landings by IFQ scallop vessels fishing in the NGOM scallop management area shall be deducted from their respective scallop IFQs. Landings by incidental catch scallop vessels and limited access scallop vessels fishing under the scallop DAS program shall not be deducted from the NGOM total allowable catch specified in paragraph (b) of this section.

* * * * *

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ABC/ACL as defined in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ABC/ACL defined in § 648.53(a).

* * * * *

(3) If the annual NGOM TAC is exceeded, the amount of NGOM scallop landings in excess of the TAC specified in paragraph (b)(1) of this section shall be deducted from the NGOM TAC for the subsequent fishing year, as soon as practicable, once scallop landings data for the NGOM fishery is available.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a trip under the scallop DAS program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM permit, the vessel must declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

* * * * *

■ 16. In § 648.63, paragraph (b)(2)(iii) is revised to read as follows:

§ 648.63 General category Sectors and harvesting cooperatives.

* * * * *

(b) * * *

(2) * * *

(iii) A sector shall not be allocated more than 20 percent of the ACL for IFQ vessels defined in § 648.53(a)(4).

* * * * *

■ 17. In § 648.64, paragraph (e) is revised to read as follows:

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

* * * * *

(e) *Process for implementing the AM*—(1) *If reliable information is available to make a mid-year determination:* On or about January 15 of each year, based upon catch and other information available to NMFS, the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded, or is projected to be exceeded, by scallop vessels prior to the end of the scallop fishing year. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial projection in mid-January, the Regional Administrator shall implement the AM in accordance with the APA and notify owners of limited access and LAGC scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch, overage, and projection that resulted in the closure.

(2) *If reliable information is not available to make a mid-year determination:* Once NMFS has compiled the necessary information (*e.g.,* when the previous fishing year's observer and catch data are fully available), the Regional Administrator shall determine whether a yellowtail flounder sub-ACL was exceeded by scallop vessels following the end of the scallop fishing year. The determination shall include the amount of the overage, specified as a percentage of the overall sub-ACL for the applicable yellowtail flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this information, the Regional Administrator shall implement the AM in accordance with the APA in Year 3 (*e.g.,* an accountability measure would be implemented in fishing year 2016 for an overage that occurred in fishing year 2014) and notify owners of limited access and LAGC scallop vessels by letter identifying the length of the closure and a summary of the yellowtail flounder catch and overage information.

* * * * *

■ 18. In § 648.65, paragraph (c) is revised to read as follows:

§ 648.65 Windowpane flounder sub-ACL and AM for the scallop fishery.

* * * * *

(c) *Process for implementing the AM*—(1) *If reliable information is available to make a mid-year determination:* On or about January 15 of each year, based upon catch and other information available to NMFS, the Regional Administrator shall determine whether the SNE/MA windowpane flounder sub-ACL was exceeded, or is projected to be exceeded, and if an accountability measure was triggered as described in § 648.90(a)(5)(iv), by scallop vessels prior to the end of the scallop fishing year. The determination shall include the amount of the overage or projected amount of the overage, specified as a percentage of the overall sub-ACL for the SNE/MA windowpane flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this initial determination in mid-January, the Regional Administrator shall implement the AM in the following fishing year in accordance with the APA and attempt to notify owners of limited access and LAGC scallop vessels by letter identifying the length of the gear restricted area and a summary of the SNE/MA windowpane flounder catch, overage, and projection that resulted in the gear restricted area.

(2) *If reliable information is not available to make a mid-year determination:* Once NMFS has compiled the necessary information (*e.g.,* when the previous fishing year's observer and catch data are fully available), the Regional Administrator shall determine whether the SNE/MA windowpane flounder sub-ACL was exceeded and if an accountability measure was triggered as described in § 648.90(a)(5)(iv), by scallop vessels following the end of the scallop fishing year. The determination shall include the amount of the overage, specified as a percentage of the overall sub-ACL for the SNE/MA windowpane flounder stock, in accordance with the values specified in paragraph (a) of this section. Based on this information, the Regional Administrator shall implement the AM in accordance with the APA in Year 3 (*e.g.,* an accountability measure would be implemented in fishing year 2016 for an overage that occurred in fishing year 2014) and attempt to notify owners of limited access and LAGC scallop vessels by letter identifying the length of the gear restricted area and a summary of the SNE/MA windowpane flounder catch and overage information.

* * * * *

[FR Doc. 2016–19465 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 158
Tuesday, August 16, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–DA–16–0056]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension of and revision to the currently approved information collection for report forms under the Federal milk marketing order program.

DATES: Comments on this notice must be received by October 17, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments electronically at *http://www.regulations.gov* or to the Office of the Deputy Administrator, Dairy Program, AMS, USDA, 1400 Independence Avenue SW., Room 2968 South, Stop 0225, Washington, DC 20250–0225. Comments should make reference to the date and page number of this issue of the **Federal Register**. All comments will be posted electronically without change; including any personal information provided at *http://regulations.gov.* Comments will also be available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David R. Jamison, Director, Order Operation and Accountability Division, Dairy Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 2968 South, Stop 0225, Washington, DC 20250–0225.

SUPPLEMENTARY INFORMATION:

Title: Report Forms under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives).

OMB Number: 0581–0032.

Expiration Date of Approval: February 28, 2017.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Federal milk marketing order regulations (7 CFR parts 1000–1199) authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), require milk handlers to report in detail the receipts and utilization of milk and milk products handled at each of their plants that are regulated by a Federal order. The data are needed to administer the classified pricing system and related requirements of each Federal order.

A Federal milk marketing order (hereinafter, Order) is a regulation issued by the Secretary of Agriculture that places certain requirements on the handling of milk in the area it covers. Each Order is established under the authority of the Act. The Order requires that handlers of milk for a marketing area pay not less than certain minimum class prices according to how the milk is used. These prices are established under each Order after a public hearing at which evidence is received on the supply and demand conditions for milk in the market. An Order requires that payments for milk be pooled and paid to individual farmers or cooperative associations of farmers on the basis of a uniform or average price. Thus, all eligible farmers (producers) share in the market wide use-values of milk by regulated handlers.

Milk Orders help ensure adequate supplies of milk and dairy products for consumers and adequate returns to producers.

The Orders also provide for the public dissemination of market statistics and other information for the benefit of producers, handlers, and consumers.

Formal rulemaking amendments to the Orders must be approved in referenda conducted by the Secretary.

During 2015, 35,181 dairy farmers delivered over 126 billion pounds of milk to handlers regulated under the milk orders. This volume represents 61 percent of all milk marketed in the U.S. and 61 percent of the milk of bottling quality (Grade A) sold in the country. The value of this milk delivered to Federal milk order handlers at minimum order blend prices was over $21 billion. Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 41 billion pounds—32 percent of total producer deliveries.

Each Order is administered by a USDA market administrator. The market administrator is authorized to levy assessments on regulated handlers to carry out the market administrator's duties and responsibilities under the Orders. Additional duties of the market administrators are to prescribe reports required of each handler, to assure that handlers properly account for milk and milk products, and to assure that such handlers pay producers and associations of producers according to the provisions of the Order. The market administrator employs a staff that verifies handlers' reports by examining records to determine that the required payments are made to producers. Most reports required from handlers are submitted monthly to the market administrator.

The Biennial Summary of Packaged Fluid Milk Sales in Federal Order Markets, by Size, Container Type and Distribution Method is a new electronic form that was added in 2015. The data from this form is collected from all regulated handlers who process and/or sell Class I fluid milk products under a Federal Milk Marketing Order.

The forms used by the market administrators are required by the respective Orders that are authorized by the Act. The forms are used to establish the quantity of milk received by handlers, the pooling status of the handlers, the class-use of the milk used by the handler, and the butterfat content and amounts of other components of the milk.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the Orders, and their use is necessary to fulfill the intent of the Act as expressed in the Orders and in the rules and regulations issued under the Orders. The information collected is used only by authorized employees of the market administrator and authorized representatives of the USDA, including AMS Dairy Programs' headquarters staff.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.47 hours per response.

Respondents: Milk handlers and milk marketing cooperatives.

Estimated Number of Respondents: 690.

Estimated Total Annual Responses: 18,591.

Estimated Number of Responses per Respondent: 27.

Estimated Total Annual Burden on Respondents: 27,334.05.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 10, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–19530 Filed 8–15–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Notice of Request for Approval of an Information Collection

AGENCY: Office of Advocacy and Outreach, Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the intent, in accordance with the Paperwork Reduction Act of 1995, of the Office of Advocacy and Outreach (OAO) to request an extension/revision of a currently approved information collection to the Minority Farm Register. The Minority Farm Register is a voluntary register of minority farm and ranch operators, landowners, tenants, and others with an interest in farming or agriculture. The OAO uses the collected information to better inform minority farmers about U.S. Department of Agriculture (USDA) programs and services.

DATES: We will consider comments received by October 17, 2016, at 5:00 p.m. EST.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods: (1) Federal eRulemaking Portal: Go to *http://regulations.gov* and follow the online instructions for submitting comments; (2) Mail: U.S. Department of Agriculture, Office of Advocacy and Outreach, Attn: Kenya Nicholas, Program Director, Whitten Building Room 520–A, Mail Stop 0601, 1400 Independence Avenue SW., Washington, DC 20250; and (3) Fax: (202) 720–7704.

How to File a Complaint of Discrimination: To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at: *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

FOR FURTHER INFORMATION CONTACT:

Agency Contact: U.S. Department of Agriculture, Office of Advocacy and Outreach, Attention: Kenya Nicholas, Program Director, Whitten Building Room 520–A, Mail Stop 0601, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 720–6350, Fax: (202) 720–7704, Email: *kenya.nicholas@osec.usda.gov.*

Persons with Disabilities: Persons who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Title: USDA Minority Farm Register.

Office of Management and Budget (OMB) Number: 0560–0231.

Expiration Date: October 31, 2016.

Type of Request: Extension/Revision.

Abstract: The Minority Farm Register is a voluntary register of minority farm and ranch operators, landowners, tenants, and others with an interest in farming or agriculture. The registrant's name, address, email, phone number, race, ethnicity, gender, farm location, and signature will be collected; however, the registrant's name, address, and signature are the only items required to register. Providing this information is completely voluntary. USDA's OAO will use this information to help inform minority farmers and ranchers about programs and services provided by USDA agencies. The Minority Farm Register is maintained by OAO. Because USDA partners with community-based organizations, minority-serving educational institutions, and other groups to communicate USDA's programs and services, the OAO may share information collected with these organizations for outreach purposes. The race, ethnicity, and gender of registrants may be used to provide information about programs and services that are designed for these particular groups. Information about the Minority Farm Register is available on the Internet to ensure that the program is widely publicized and accessible to all.

Respondents: Individuals and households.

Estimated Number of Respondents: 5000.

Estimated Average Number of Responses per Respondent: 1.

Estimated Total Annual Number of Responses: 5000.

Estimated average time to respond: 5 minutes (0.083 hours) and 1 hour traveling time. *Estimated Total Annual Burden on all Respondents:* 4667 hours.

We are requesting comments on all aspects of this information collection to help us to: (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of OAO, including whether the information will have practical utility; (2) Evaluate the accuracy of OAO's estimate of burden including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed this 8th day of August, 2016.

Carolyn C. Parker,

Director, Office of Advocacy and Outreach.

[FR Doc. 2016–19532 Filed 8–15–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program—Quality Control

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection.

DATES: Written comments must be received on or before October 17, 2016.

ADDRESSES: Comments may be sent to: Stephanie Proska, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 822, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Stephanie Proska at 703–305–0928 or via email to *SNAPHQ–WEB@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Stephanie Proska at 703–305–2437.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Supplemental Nutrition Assistance Program (SNAP)—Title 7, Part 275.

OMB Number: 0584–0303.

Expiration Date: January 31, 2017.

Type of Request: Revision of a currently approved collection.

Abstract: There are three components of the Quality Control (QC) system that are covered in this required information collection. They are: (1) The sampling plan; (2) the arbitration process; and (3) the good cause process. Each State is required to develop a sampling plan that demonstrates the integrity of its case selection procedures. The QC system is designed to measure each State agency's payment error rate based on a statistically valid sample of SNAP cases. A State agency's payment error rate represents the proportion of cases that were reported through a QC review as being ineligible, as well as the proportion of SNAP benefits that were either overissued or underissued to SNAP households.

The QC system contains procedures for resolving differences in review findings between State agencies and FNS. This is referred to as the arbitration process. The QC system also contains procedures that provide relief for State agencies from all or a part of a QC liability when a State agency can demonstrate that a part or all of an excessive error rate was due to an unusual event that had an uncontrollable impact on the State agency's payment error rate. This is referred to as the good cause process.

The approved burden for the QC system includes the burden for the QC sampling plan, the arbitration process and the good cause process. The currently approved burden for total reporting burden for the QC system is 1,544.91 hours, an increase of 167.91 hours. (1) The annual reporting burden associated with the QC sampling plan remains at 265 hours. (2) We estimate the annual reporting burdens associated with arbitration and (3) good cause processes to total 791.1 and 320 hours, respectively. The decrease in the revised burden from the currently approved 792 to 791.1 hours for the arbitration process is due to a decrease in the estimated number of responses per State agency. These decreases are a result of State agencies less frequently disagreeing with FNS' findings. The requested annual reporting burden for the good cause process remains at 320 hours.

In addition, we are adding two additional forms to the reporting burden: FNS 74A, Template for QC-related New Investment Plans and FNS 74B, Template for QC-related New Investment Plan Progress Reports. These two templates are being added to this collection in an effort to formalize the regulatory requirements of these two items for States that are subject to QC-related new investments.

Based on the number of State agencies subject to the QC-related new investment requirement over the last three years and feedback from those State agencies that responded to our inquiry, we estimate the amount of time to create a QC-related new investment plan is approximately 32 hours. This estimate includes determining root causes of a State agency's error rate, exploring methods to address those causes, and writing up the plan to address those causes. In addition, we estimate it takes approximately 5 hours to complete a progress report updating FNS on the status of the activities in the State agency's relevant QC-related new investment plan. We estimate the total annual reporting burden for 4 State Agencies to complete a new investment plan to be 128 hours and 40 hours for the progress report.

The requested annual recordkeeping burden associated with the QC sampling plan remains at 1.25 hours per year. The revised annual recordkeeping burdens associated with arbitration has increased from 0.7788 hour to 1.4868 hours and the good cause process has remained at 0.0472 hour. The estimated recordkeeping burden for the QC-related new investment plan and progress reports total 0.0944 hour and 0.1888 hours respectively.

The burden for recordkeeping has increased from 2.076 hours to 3.068 hours. As a result, the overall annual burden for the QC system, as proposed by this notice, increased from 1,379.076 to 1547.978 hours, totaling an increase of 168.90 hours.

Affected public	Requirement	Estimated number of respondents	Responses annually per respondent	Total annual responses (Col. b × c)	Estimated average number of hours per response	Estimated total hours (Col. d × e)
Reporting Burden						
State Agencies	Sampling Plan	53	1	53	5	265
State Agencies	Arbitration Process	15	4.2	63	12.57	791.91
State Agencies	Good Cause Process	2	1	2	160	320
State Agencies	New Investment Plan Template Form FNS 74 A.	4	1	4	32	128
State Agencies	New Investment Progress Report Template Form FNS 74 B.	4	2	8	5	40
Grand Total Reporting		53		130		1544.91

Affected public	Requirement	Estimated number of respondents	Number of reports annually per state	Number of total annual records	Estimated time per record	Estimated total recordkeeping hours
Recordkeeping Burden						
State Agencies	Sampling Plan	53	1	53	0.0236	1.2508
State Agencies	Arbitration Process	15	4.2	63	0.0236	1.4868
State Agencies	Good Cause Process	2	1	2	0.0236	0.0472
State Agencies	New Investment Plan Template Form FNS 74 A.	4	1	4	0.0236	0.0944
State Agencies	New Investment Progress Report Template Form FNS 74 B.	4	2	8	0.0236	0.1888
Grand Total Recordkeeping		53		130		3.068
Combined Grand Total Reporting and Recordkeeping.		53	4.90566	260	5.953730	1547.978

Dated: August 2, 2016.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2016–19533 Filed 8–15–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mineral County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mineral County Resource Advisory Committee (RAC) will meet in Superior, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act.

DATES: The meeting will be held August 25, 2016, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Superior Ranger District, 209 W. Riverside Avenue, Superior, Montana.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Superior Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Carole Johnson, District Ranger, by phone at 406–822–4233 or via email at *cajohnson01@fs.fed.us;* or Racheal Koke, RAC Coordinator, by phone at 406–822–3930 or via email at *rkoke@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to vote on projects that were previously presented.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 2, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Racheal Koke, RAC Coordinator, P.O. Box 460, Superior, Montana 59872; by email to *rkoke@fs.fed.us,* or via facsimile to 406–822–3903.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 8, 2016.

Carole Johnson,

District Ranger.

[FR Doc. 2016–19524 Filed 8–15–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: Delivery Verification Procedure for Imports.

Form Number(s): BIS–647P.

OMB Control Number: 0694–0016.

Type of Request: Regular.

Burden Hours: 56 hours.

Number of Respondents: 100 respondents.

Average Hours per Response: 30 minutes per response.

Needs and Uses: Foreign governments, on occasions, require U.S. importers of strategic commodities to furnish their foreign supplier with a U.S. Delivery Verification Certificate validating that the commodities shipped to the U.S. were in fact received. This procedure increases the effectiveness of controls on the international trade of strategic commodities.

Affected Public: Businesses and other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: August 11, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–19507 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–52–2016]

Foreign-Trade Zone (FTZ) 134—Chattanooga, Tennessee; Notification of Proposed Production Activity; Wacker Polysilicon North America LLC (Polysilicon); Charleston, Tennessee

Wacker Polysilicon North America LLC (Wacker) submitted a notification of proposed production activity to the FTZ Board for its facility in Charleston, Tennessee within FTZ 134. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 5, 2016.

A separate application for subzone designation at the Wacker facility was submitted and will be processed under Section 400.38 of the Board's regulations. The facility is used for the production of polysilicon. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Wacker from customs duty payments on the foreign-status materials/components used in export production (estimated 95 percent of production). On its domestic sales, Wacker would be able to choose the duty rate during customs entry procedures that applies to hyperpure polysilicon (duty-free) for the foreign-status material/component noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The material/component sourced from abroad is: silicon metal (duty rate: 5.3%). Wacker has only requested authority to admit silicon metal that is not subject to an antidumping/countervailing duty (AD/CVD) order to the zone in foreign status. Any silicon metal subject to an AD/CVD order would be brought into the zone in domestic (duty-paid) status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 26, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 10, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–19514 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–90–2016]

Approval of Expanded Subzone Status; Space Systems/Loral, LLC, Palo Alto, Menlo Park, Mountain View and San Jose, California

On June 22, 2016, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of San Jose, California, grantee of FTZ 18, requesting expanded subzone status subject to the existing activation limit of FTZ 18, on behalf of Space Systems/Loral, LLC, in San Jose, California.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 42650, June 30, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to expand Subzone 18E is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 18's 2,000-acre activation limit.

Dated: August 10, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–19518 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–53–2016]

Foreign-Trade Zone 283—West Tennessee Area; Application for Reorganization (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Northwest Tennessee Regional Port Authority, grantee of Foreign-Trade Zone 283, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 11, 2016.

FTZ 283 was approved by the FTZ Board on October 11, 2012 (Board Order 1851, 77 FR 64463–64464, October 22, 2012) under the alternative site framework. The zone currently has a service area that includes the Counties of Dyer, Gibson, Haywood, Lake, Lauderdale, Madison, Obion and Tipton.

The applicant is now requesting authority to expand the service area of the zone to include the Counties of Fayette, Hardeman and McNairy, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The application indicates that the proposed expanded service area is adjacent to the Memphis Customs and Border Protection Port of Entry.

In accordance with the FTZ Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is October 17, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 31, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: August 11, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–19515 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Foreign Availability Procedures

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before *October 17, 2016.*

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093, *Mark.Crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations in accordance with Section 768 of the Export Administration Regulations. Exporters are urged to voluntarily submit data to support the contention that items controlled for export for national security reasons are available-in-fact, from a non-U.S. source, in sufficient quantity and of comparable quality so as to render the control ineffective.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0004.

Form Number(s): N/A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time per Response: 255 hours.

Estimated Total Annual Burden Hours: 510 hours.

Estimated Total Annual Cost to Public: $20.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 11, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–19466 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE698

Endangered and Threatened Species; Draft Recovery Plan for Puget Sound/Georgia Basin Yelloweye Rockfish and Bocaccio

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability of the Puget Sound/Georgia Basin Yelloweye rockfish (*Sebastes ruberrimus*) and Bocaccio (*S. paucispinis*) Draft Recovery Plan (Plan) for public review. NMFS is soliciting review and comment from the public and all interested parties on the draft Plan, and will consider all substantive comments received during the review period before submitting the Plan for final approval.

DATES: Comments and information on the draft Plan must be received by close of business on November 14, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0083 by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0083.* Click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Chris Yates, Assistant Regional Administrator, Protected Resources Division, NMFS, West Coast Regional Office, Attn: Dan Tonnes 7600 Sand Point Way NE., Seattle, WA 98115.

Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Dan Tonnes (206–526–4643), email *Dan.Tonnes@noaa.gov;* or Jennifer Sawchuk (360–561–4025), email *Jennifer.Sawchuk@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 28, 2010, we listed the Puget Sound/Georgia Basin Distinct Population Segments (DPSs) of yelloweye rockfish and canary rockfish as threatened under the ESA, and the Puget Sound/Georgia Basin DPS of bocaccio as endangered (75 FR 22276). The DPS determinations for Puget Sound/Georgia Basin yelloweye rockfish, canary rockfish, and boccacio were informed by the best available scientific and commercial data and the status review conducted by a Biological Review Team (BRT) (Drake *et al.,* 2010). The final critical habitat rule for the listed DPSs of rockfish was published in the **Federal Register** on November 1, 2014 (79 FR 68041).

In 2013, we appointed a recovery team and initiated recovery planning for the listed rockfish species. Through the process of recovery planning, priority research and recovery actions emerged. One such action was to seek specific genetic data for each of the listed rockfish species to better evaluate and determine whether differences exist in the genetic structure of the listed species' populations between inland basins where the DPSs occur and the outer coast. In 2014 and 2015, we partnered with the Washington Department of Fish and Wildlife, several local fishing guides, and anglers including anglers from the Puget Sound Anglers and the Kitsap Pogie Club to collect samples and compare the genetic structure of the species' populations between the different basins of the Puget Sound/Georgia Basin DPSs area and the outer coast.

In 2015 we announced a 5-year review (80 FR 6695; February 6, 2015) for the three rockfish DPSs and genetics information from the above cooperative study was included in the review. The 5-year review was completed May 5, 2016 (NMFS 2016) and is available at *http://www.westcoast.fisheries.noaa.gov/publications/protected_species/other/rockfish/5.5.2016_5yr_review_report_rockfish.pdf.* To complete the review, we collected, evaluated, and incorporated all information on the species that has become available since April 2010, the date of the listing, including the 2014 final critical habitat designation and the newly obtained genetic information.

The BRT found that current genetic data evaluated and interpreted in the context of all available scientific information now provides strong evidence that canary rockfish of the Puget Sound/Georgia Basin are not discrete from coastal area canary rockfish. Based on the BRT findings, and best available science and commercial information, and in accordance with the DPS policy (61 FR 4722; February 7, 1996), we determined that the canary rockfish of the Puget Sound/Georgia Basin do not meet the criteria to be considered a DPS and recommended delisting canary rockfish in the 5-year review (NMFS 2016). The new genetics information confirmed the existence of an inland population of Puget Sound/Georgia Basin yelloweye rockfish that is discrete from coastal yelloweye rockfish, and there was not information to change our prior status review determination that Puget Sound/Georgia Basin bocaccio are discrete from coastal fish (Ford, 2015). Based on the new information and recommendation in the 5-year review, we published a proposed rule to remove Puget Sound/Georgia Basin canary rockfish from the Federal List of Threatened and Endangered Species (81 FR 43979; July 6, 2016). The Puget Sound/Georgia Basin yelloweye rockfish DPS shall remain threatened under the ESA, and the Puget Sound/Georgia Basin bocaccio DPS shall remain endangered. Therefore, this draft recovery plan is for yelloweye rockfish and bocaccio and does not include canary rockfish.

Draft Recovery Plan

Recovery plans describe actions beneficial to the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). Section 4(f)(1) of the ESA requires that recovery plans incorporate: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the Plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

The Draft Recovery Plan for Yelloweye Rockfish and Bocaccio of the Puget Sound/Georgia Basin was developed by NMFS in cooperation with a recovery team made up of experts from the University of Washington, the Washington Department of Fish and Wildlife, the Northwest Fisheries Science Center, and the Northwest Indian Fisheries Commission. Additionally, a number of scientists have provided peer review and individuals from the Rockfish Workgroup, a group of diverse stakeholders, have also provided research ideas.

The BRT appointed to assess the status of the petitioned rockfish in 2008 found that the total rockfish abundance in the Puget Sound/Georgia Basin has declined by 70 percent, and that yelloweye rockfish and bocaccio have declined to an even greater extent (Drake *et al.,* 2010). NMFS's goal is to restore the threatened yelloweye rockfish DPS and the endangered bocaccio DPS of the Puget Sound/Georgia Basin to the point where they are again secure, self-sustaining members of their ecosystems and no longer need the protections of the ESA. The Plan provides background on the natural history of yelloweye rockfish and bocaccio, population trends, and the potential threats to their viability. The Plan lays out a recovery strategy to address the potential threats based on the best available science, identifies site-specific actions with time lines and costs, and includes recovery goals and criteria. NMFS concludes that the Plan meets the requirements of the ESA.

The primary factors responsible for the decline of the DPSs of rockfishes were overutilization for commercial and recreational purposes, habitat degradation, water quality problems including low dissolved oxygen and elevated contaminant levels, and inadequacy of existing regulatory mechanisms to address bycatch (75 FR 22276, April 28, 2010). The Plan assesses these factors and other threats using the best available and commercial data, provides current information and conservation measures to assess, rank and prioritize, and provide guidance to address the threats. In some cases, more information is needed to understand the extent or if the threat is limiting recovery, and in those cases research to address these data gaps is outlined. This Plan contains both demographic and threats-based criteria for down- and delisting bocaccio and delisting criteria for yelloweye rockfish.

The Plan is not regulatory, but presents guidance for use by agencies and interested parties to assist in the recovery of yelloweye rockfish and bocaccio. The Plan identifies substantive actions needed to achieve recovery by assessing the species' population abundance, distribution, and genetic changes over time and addressing the threats to the species. When determining recovery actions, the Plan prioritized actions that increase knowledge of the species themselves, threats ranked as high risk threats, and aims to improve understanding of whether a particular threat is limiting recovery and to eliminate or mitigate that threat, or to improve our understanding of, and ability to manage, that threat. The actions in the Plan include research, management, monitoring, and outreach efforts, because a comprehensive approach to yelloweye rockfish and bocaccio recovery is likely to have greater success than focusing on any one type of action. There are also actions targeted at incorporating new information and conducting regular reassessments, making this Plan an adaptive management plan.

We expect the Plan to inform section 7 consultations with Federal agencies under the ESA and to support other ESA decisions, such as considering permits under section 10. We have already begun implementation of several actions as described in the plan, such partnering with the Washington Department of Fish and Wildlife to conduct remotely operated vehicle surveys to assess listed rockfish abundance, distribution, and habitat use. After public comment and the adoption of the Final Recovery Plan, we will continue to implement actions in the plan for which we have authority, work cooperatively on implementation of other actions, and encourage other Federal and state agencies to implement recovery actions for which they have responsibility and authority. There are several Appendices in the Plan intended to assist with implementation of actions to address specific threats.

Because of the life histories of yelloweye rockfish and bocaccio, once populations are at a low level, recovery can require decades (Parker *et al.,* 2000; Love *et al.,* 2002). In particular, rockfish grow slowly, have a long life span and low natural mortality rates, mature late in life, often have sporadic reproductive success from year to year, may display high fidelity to specific habitats and locations, and require a diverse genetic and age structure to maintain healthy populations (Love *et al.,* 2002). Recovery of yelloweye rockfish and bocaccio will require a long-term effort and will require cooperation and coordination of Federal, state, tribal and local government agencies, and the community.

The total time and cost to recovery are difficult to predict with the current information. The Plan outlines recovery research and actions, priority numbers, and estimated rockfish recovery program cost over a 5-year period. Projections of which actions may continue beyond year 5 are provided, but there is uncertainty regarding how long recovery will take. Currently, we do not have reliable biomass information for yelloweye rockfish and bocaccio. As prioritized information is obtained on present and past biomass, as well as additional information to assess the impact on how some threats may limit recovery and how the threats can be effectively managed or mitigated, more robust time and expense projections can be developed.

The cost of the approximately 45 actions recommended in this Plan for the first 5 years of recovery is approximately $23,360,000. Assuming that recovery takes one and a half generations (of yelloweye rockfish) or approximately 60 years, the total recovery costs over 60 years would be approximately $82,970,000. The annual cost of recovery is estimated to decrease substantially after the first 5 to 10 years, once the necessary baseline research and management actions are performed. There are numerous parallel efforts underway, independent from listed rockfish recovery, to protect and restore the Puget Sound ecosystem. Such efforts include oil-spill prevention measures, contaminated sediment clean-up projects, and other important projects. These efforts will provide benefits to listed rockfish and their habitats and prey base and are thus highlighted in the plan. However, the costs of these actions are not included in the total cost of listed rockfish recovery because they would occur independent of this Plan. Similarly, actions conducted to restore listed rockfish and their habitats will benefit other listed species that utilize the Puget Sound area, such as Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*), and may provide economic benefits. We are unable to quantify the economic benefits of listed rockfish recovery actions, but it is likely the benefits to the ecosystem and economy would offset the total recovery costs estimated in the Plan.

NMFS requests and will consider all substantive comments and information presented during the public comment period as we finalize this Plan. Public meetings will be held to provide information about the Plan and to receive public comments. The meetings will be held at in Olympia (The Olympia Center, Room B, 222 Columbia St. NW., Olympia, WA) on Thursday, October 6, 2016 at 7pm; in Friday Harbor (Brick Works, 150 Nichols St., Friday Harbor, WA) on Tuesday, October 18, 2016 at 7pm; in Anacortes (City Council Chambers, Anacortes City Hall, 904 6th St., Anacortes, WA) on Wednesday, October 19, 2016 at 7pm; and in Seattle (Seattle Aquarium, Puget Sound Hall, 1483 Alaskan Way, Seattle, WA) on Thursday October 20, 2016 at 7 p.m.

References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**) or on our Web page at: *http://www.westcoast.fisheries.noaa.gov/protected_species/rockfish/rockfish_in_puget_sound.html. http://www.westcoast.fisheries.noaa.gov/*.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 9, 2016.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–19459 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE805

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) *Groundfish* Management Team (GMT) will hold a one-day work session that is open to the public.

DATES: The meeting will begin at 9 a.m. on Thursday, October 6, 2016, and end after business for the day is completed.

ADDRESSES: The meeting will be held at the Washington Department of Fish and Wildlife Natural Resources Building, Room 682, 1111 Washington St. SE., Olympia, WA 98501, (360) 902–2200.

Council address: Pacific Council, 7700 NE. Ambassador Place, Suite 101, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Ames, Pacific Council, 503–820–2426.

SUPPLEMENTARY INFORMATION:

Agenda

The primary purpose of the GMT work session is to discuss with the West Coast *Groundfish* Observer Program refinements to *groundfish* projection models for use in fishery management. The GMT's task will be to identify which models need improvements, outline the improvements necessary, and develop recommendations for consideration by the Pacific Council at its November meeting in Garden Grove, California. During the November meeting, the Council will determine which models are ready for review and recommend a review schedule. A detailed description on the process for revising and approving models is outlined in Council Operating Procedure 25. The GMT may also address other assignments relating to *groundfish* management. No management actions will be decided by the GMT.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt, at (503) 820–2425, at least five days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–19490 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE036

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from the Florida Keys Commercial Fisherman's Association (Association). If granted, the EFP would authorize the deployment of four fish trap designs at several sites in the Federal waters of the Gulf of Mexico (Gulf) and the South Atlantic to determine the effectiveness of these gear types for attracting and collecting invasive lionfish and to obtain lionfish life-history information over a 1 year period. The EFP would also utilize an outreach and education program to inform the public about the status of lionfish as an invasive species, efforts to control the spread of the population, and utilization of lionfish as a consumer food source.

DATES: Written comments must be received on or before September 15, 2016.

ADDRESSES: You may submit comments on the application by any of the following methods:

- *Email: 0648.XE036.Association.Lionfish.EFP@noaa.gov.* Include in the subject line of the email comment the following document identifier: "Association Lionfish_EFP".
- *Mail:* Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

The application and related documents are available for review upon written request to any of the above addresses.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, 727–824–5305; email: *susan.gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

Lionfish is an invasive species that occurs in both the Gulf and South Atlantic. The harvest of lionfish in the Federal waters of the Gulf and South Atlantic is not currently managed. The EFP request, however, involves the use of prohibited gear types. Federal regulations prohibit the use or possession of a fish trap in Federal waters in the Gulf of Mexico and South Atlantic, except in certain fisheries with certain approved traps (50 CFR 622.2 and 622.9(c)). In Gulf Federal waters, crustacean traps are allowed for the commercial harvest of spiny lobster (50 CFR 622.2 and 622.405), and in South Atlantic Federal waters, black sea bass pots are allowed for the commercial harvest of black sea bass, golden crab traps are allowed for the commercial harvest of golden crab, and crustacean traps are allowed for the commercial harvest of spiny lobster (50 CFR 622.2, 622.198, 622.248, 622.249, and 622.405). The EFP would exempt this research activity from Federal regulations at 50 CFR 622.9(c).

The purpose of this study is to test the effectiveness of different trap designs in capturing lionfish in the Gulf and South Atlantic with a goal of determining the performance of traps as part of a lionfish population control program. Additionally, the project would collect information on lionfish population distribution, density, and life-history information. The applicant also proposes to develop and utilize an outreach and education program to further increase awareness about the lionfish, its status as an invasive species, efforts to control the spread of the population, and utilization of lionfish as a consumer food source.

The Association requests authorization to deploy four fish trap designs at reef sites in the Federal waters of the Gulf and South Atlantic to target lionfish. Fish trap deployment in the Gulf would be off west central Florida (Tampa, FL), in the South Atlantic off east central Florida (Ponce Inlet, FL) and South Carolina (Murrells Inlet, SC), and in the Florida Keys.

As described in the application, the four fish trap designs to be tested are wood spiny lobster trap, wire basket spiny lobster trap, rectangular wire trap, and sea bass pot. All four designs would have biodegradable trap panels and modified funnels not to exceed 4 by 7 inches (10 by 18 cm). Current project plans would have 25 of each of the 4 trap types deployed on the seafloor in a combination resulting in 4 strings of 25 traps per string at each of the four locations twice per month during a 12-month period during the project. The depth of trap deployment is expected to be between 65 to 300 ft (20 to 91 m). Trap soak time will range from several hours to 2 weeks depending on trap type and location. Setting and hauling of the traps is expected to occur during daylight hours. Bait to be used in the traps would include live lionfish, cowhide strips, and/or female lionfish gonads. Sampling at each site would be limited to 100 days per year.

Vessels to be used in the proposed study would be federally permitted commercial fishing vessels under contract to the Association. Vessel crew or observers onboard the contract vessels during the sampling trips would collect and record date and time of trap deployment and retrieval, location, water depth, and collect biological samples. Video images would also be used to assess the success of the trap designs as structures for attracting lionfish. A percentage of the lionfish catch would be retained for further biological sampling and analysis under the study, a percentage would be tagged and released, and a percentage would be retained to promote lionfish as a food source to the consumer. All other fish species caught in the traps would be released and returned to depth using decompression devices; only lionfish would be retained in the project.

The applicant has requested the EFP be effective for a 1-year period from the date any EFP is issued.

The applicant is still in the process of obtaining funding for this research. Therefore, further information regarding the specific locations for sampling, sampling methods and schedule, are not yet available. If, based on this additional information, the permit as granted is significantly different from the original application, NMFS may publish notification in the **Federal Register** describing the exempted fishing to be conducted under the EFP.

NMFS finds this application warrants further consideration based on a preliminary review. Possible conditions the agency may impose on this permit, if they are granted, include but are not limited to, a prohibition of conducting research within marine protected areas, marine sanctuaries, special management zones, or artificial reefs without additional authorization. Additionally, NMFS may require special protections for species listed under the Endangered Species Act and their critical habitat. A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the appropriate fishery management agencies of the affected states, the Gulf of Mexico and South Atlantic Fishery Management Councils, and the U.S. Coast Guard, and a determination that they are consistent with all applicable laws.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–19505 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE646

Conclusion of National Marine Fisheries Service International Trade Data System Tests Concerning the Electronic Submission of Certain Data Required for Fish Imports and Exports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: U.S. Customs and Border Protection (CBP) and the National Marine Fisheries Service (NMFS) previously announced tests under the National Customs Automation Program (NCAP) concerning the electronic transmission of certain data for NMFS-regulated commodities through the Automated Commercial Environment (ACE) and through the Automated Export System (AES). The tests included electronic data submission for imports (published in the **Federal Register** on June 5, 2015) and for exports (published in the **Federal Register** on June 3, 2016).

During the imports test, entry filers were able to use the Automated Broker Interface (ABI) and the Document Image System (DIS) to transmit the NMFS Partner Government Agency (PGA) message data and forms required for NMFS to make admissibility determinations for entries subject to the monitoring programs for tunas, swordfish and toothfish, under the Highly Migratory Species International Trade Program (HMS), the Antarctic Marine Living Resources Trade Monitoring Program (AMR), and the Tuna Tacking and Verification Program (TTVP). During the exports test, exporters were able to use the Automated Export System (AES) and the DIS to transmit the NMFS PGA data and forms required for NMFS to collect required information on exports subject to these same trade monitoring programs.

It has been determined that ACE and AES are capable of accepting NMFS-regulated electronic entries. NMFS regulations effective on September 20, 2016 (published on August 3, 2016) will require the use of ACE or AES, as applicable, for electronic filings of regulated imports or exports of fish products. Accordingly, CBP and NMFS announce that the NCAP tests are ending on September 20, 2016. All importers and exporters of fish products regulated by NMFS are encouraged to

use ACE or AES, as applicable, for their electronic filings in advance of September 20, 2016, when such filings will become mandatory.

DATES: The NMFS ACE and AES tests conclude on September 20, 2016. ACE entries and AES export declarations for NMFS-regulated products may be continued until the conclusion of the tests. For NMFS regulated fishery products, use of ACE and AES to file electronically is required beginning September 20, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions related to the Automated Commercial Environment (ACE), ABI transmissions, or AES, contact your assigned CBP client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov.* For PGA reporting related questions, contact Emi Wallace (CBP) at *mailto:emi.r.wallace@cbp.dhs.gov* and for NMFS program related questions contact Dale Jones (NMFS) at *dale.jones@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

I. The National Customs Automation Program (NCAP)

NCAP was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of ACE, the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE and AES component functionalities. Each release begins with a test and ends with mandatory use of the new ACE or AES features. Each release builds on previous releases and sets the foundation for subsequent releases. ABI and AES allow participants to electronically file required import and export data, respectively, with CBP and transfer that data into ACE.

II. International Trade Data System

The NMFS import and export tests were conducted in furtherance of the ITDS, which is statutorily authorized by section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109–347. The purpose of ITDS, as set forth in section 405 of the SAFE Port Act of 2006, is to eliminate redundant information filing requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.

III. Conclusion of the NMFS PGA Message Set and DIS Tests

Through this notice, CBP and NMFS announce that ACE and AES are capable of accepting required data and/or forms related to electronically filed entries of NMFS regulated commodities via the NMFS PGA Message Set (for imports), in AES Trade Interface Requirements (AESTIR) or American National Standards Institute (ANSI) X12, or in ACE AESDirect using an ACE portal, bulk upload or weblink (for exports) and the DIS. CBP encourages all importers of fish products regulated by NMFS to now use ACE or AES, as applicable, for their electronic filings. Making the transition to ACE and AES now will benefit the filing community when ACE and AES become the NMFS and CBP authorized EDI system for these filings as of September 20, 2016.

IV. Transition to Use of ACE for Imports and Exports

On February 29, 2016, CBP published a notice in the **Federal Register** (81 FR 10264) announcing that, starting on March 31, 2016, CBP would begin decommissioning the Automated Commercial System (ACS) for certain entry and entry summary filings, making ACE the sole CBP-authorized EDI system for processing those electronic filings. CBP explained that the PGA Message Set and DIS pilots would be concluded on a rolling basis and that, as each pilot was concluded, ACE would become the sole CBP-authorized EDI system for electronic entry and entry summary filings for merchandise subject to the specified PGA import requirements and that merchandise subject to the specified PGA import requirements would no longer be permitted in ACS. In the case of NMFS, no PGA data was previously collected via ACS, so ACE implementation for these commodities is an important step in the NMFS effort to collect import data electronically.

Subsequently, CBP published a notice in the **Federal Register** (81 FR 32339, May 23, 2016) announcing that, effective July 23, 2016, CBP will decommission ACS for most entry and entry summary filings, making ACE the sole CBP-authorized EDI system for processing those electronic filings. As of July 23, 2016, electronic entry filings for NMFS-regulated fishery products were no longer accepted in ACS.

With respect to exports and electronic filing within ITDS, the Bureau of the Census issued a proposed rule on March 9, 2016 (81 FR 12423) to amend regulations pertaining to export requirements. In that notice of proposed rulemaking, Census explained how the AES was being integrated into ACE consistent with the "single window" concept of ITDS, as required by the SAFE Port Act. Comments submitted on that proposed rule may be viewed in the rulemaking docket: *https://www.regulations.gov/docket?D=USBC-2016-0001.*

VI. Process Changes

Although CBP and NMFS are concluding the NCAP tests, importers and exporters are encouraged to continue filing in ACE or AES, as applicable, in advance of the September 20, 2016 transition date for mandatory ACE and AES filings as recently announced by NMFS.

In December 2015, NMFS published a proposed rule that would require submission of the import and exports data and forms through ACE/AES. *See* 80 FR 81251 (December 29, 2015). For imports, these data elements and forms are set forth in the supplemental Customs and Trade Automated Interface Requirements (CATAIR) guidelines for NMFS. These specifications, including the CATAIR chapters can be found at the following link: *http://www.cbp.gov/trade/ace/catair.* For exports, the CBP Web page that contains the primary information on export requirements is: *https://www.cbp.gov/trade/aes.* Details on how to submit export data via AES are available at: *https://www.cbp.gov/trade/aes/aestir/introduction-and-guidelines.*

NMFS published a final rule on August 3, 2016 (81 FR 51126) to require electronic entry and/or export filings in ACE/AES for fish and fish products subject to permitting, reporting and recordkeeping requirements under these three programs: Highly Migratory Species International Trade Program (HMS), Antarctic Marine Living Resources Trade Monitoring Program (AMR), and the Tuna Tacking and Verification Program (TTVP). Importers, exporters, shippers and customs brokers should note that the NMFS final rule, effective September 20, 2016, requires ACE or AES electronic filings for imports and exports, respectively, including the message set, International Fisheries Trade Permit (IFTP) check, and DIS submissions.

For information regarding imports of fish products regulated by NMFS and the data elements, forms and documentation required by NMFS, importers and customs brokers should consult the ITDS implementation guidelines for NMFS at: *https://www.cbp.gov/document/guidance/nmfs-pga-message-set-guidelines.* For exports, the PGA record formats are listed at: *https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats.* The Appendix Q Record Layout Key provides details how each record should be structured: *https://www.cbp.gov/document/guidance/appendix-q-record-layout-key.*

NMFS Office of International Affairs and Seafood Inspection will host two public webinar meetings on August 18, 2016 and September 1, 2016, 2:30 p.m.–4:00 p.m. Eastern, to inform interested stakeholders about this regulation and its implementation. Instructions on how to join the webinars are provided at the following internet link: *http://www.nmfs.noaa.gov/ia/slider_stories/2016/07/08022016_itds_final_rule.html.*

Dated: August 10, 2016.

John Henderschedt,

Director, Office for International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2016–19458 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE668

Magnuson-Stevens Act Provisions; National Standard 2—Scientific Information; Regional Peer Review Processes

AGENCY: National Marine Fisheries Service (NMFS); National Oceanic and Atmospheric Administration (NOAA); Commerce.

ACTION: Notice of regional peer review processes.

SUMMARY: NMFS is providing notice of the regional peer review processes established pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This notice provides a summary of each regional peer review process which has been jointly established by the Secretary and the relevant regional fishery management council (Council) for review of scientific information used to advise the Council about the conservation and management of fisheries. It also directs the public to a Web page where detailed guidelines can be found for each peer review process. NMFS and the Councils may update those guidelines as necessary.

DATES: Effective August 16, 2016.

FOR FURTHER INFORMATION CONTACT: William Michaels by phone 301–427–8155, or by email: *william.michaels@noaa.gov.*

SUPPLEMENTARY INFORMATION: Section 301(a)(2) of the MSA specifies that fishery conservation and management measures shall be based upon the best scientific information available. 16 U.S.C. 1851(a)(2). Section 302(g)(1)(E) of the MSA provides that the Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery. 16 U.S.C. 1852(g)(1)(E). Section 301(b) of the MSA states that the Secretary [of Commerce] shall establish advisory guidelines (which shall not have the force and effect of law), based on national standards, to assist in the development of fishery management plans. 16 U.S.C. 1851(b). These national standards include National Standard 2 (NS2), which provides guidance on the best scientific information available (BSIA) standard, including guidance on standards for establishing a peer review process per MSA section 302(g)(1)(E). The NS2 guidelines appear at 50 CFR 600.315.

The decision to establish a 302(g)(1)(E) peer review process is a joint decision made by the Secretary and a Council. If the Secretary and a Council establish such a process, it will be deemed to satisfy the requirements of the Information Quality Act (44 U.S.C. 3516), including the Office of Management and Budget (OMB) Final Information Quality Bulletin for Peer Review (70 FR 2664, January 14, 2005). 16 U.S.C. 1852(g)(1)(E). Under the NS2 guidelines, the Secretary will announce the establishment of a peer review process under MSA 302(g)(1)(E), which may include existing committees or panels, in the **Federal Register**. See 50 CFR 600.315(b)(4). This notice fulfills that requirement and is an affirmation that the existing regional peer review processes jointly commissioned by the Secretary and Council are consistent with widely accepted peer review standards and the NS2 guidelines, including requirements for public transparency.

The NS2 guidelines provide guidance and standards to establish a 302(g)(1)(E) review process and adopts many of the OMB Peer Review Bulletin standards. See 50 CFR 600.315(b). These standards emphasize the importance of expert qualifications; balance in knowledge and perspectives; lack of conflicts of interest; independence from the work being reviewed; and transparency of the peer review process. The NS2 guidelines specify that the degree of independence for a peer review may vary depending of the novelty, controversy, and complexity of the scientific information being reviewed. For reviews requiring a high degree of independence, the Center for Independent Experts (CIE) has often been used as an independent selection process for obtaining highly qualified experts to participate on review panels. Further information on CIE and NS2 is available at: *https://www.st.nmfs.noaa.gov/science-quality-assurance/index.* The NS2 guidelines also provide guidance on participation in the peer review process by members of the Council's Scientific and Statistical Committee (SSC). This notice provides links to publicly available Web pages that set forth detailed guidelines for each 302(g)(1)(E) peer review process. The guidelines may be updated as necessary and appropriate to improve the review processes. Although not within the scope of this notice, there are other important processes, including peer review, that are used by NMFS to inform fishery conservation and management that are not jointly established by the Secretary and Council pursuant to section 302(g)(1)(E), such as peer reviews pertaining to scientific information supporting international fisheries management agreements.

Description of Regional Peer Review Processes. Five regional peer review processes have been established jointly by the Secretary and Councils pursuant to MSA section 302(g)(1)(E); an overview of each is provided below.

(1) Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC)

(i) *Scope and objective.* The Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC) process has been jointly established by the NMFS Northeast Fisheries Science Center (NEFSC), NMFS Greater Atlantic Regional Fisheries Office (GARFO), New England Fishery Management Council (NEFMC), Mid-Atlantic Fishery Management Council (MAFMC), and Atlantic States Marine Fisheries Commission (ASMFC) to conduct the peer review of scientific stock assessment information used for fishery management in the Northeast and Mid-Atlantic regions.

(ii) *Background.* The Stock Assessment Workshop (SAW) is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers in the Northeast and Mid-Atlantic regions. The SAW protocol is used to prepare and review assessments for fish and invertebrate stocks in the offshore U.S. waters of the northwest Atlantic Ocean. Assessments are prepared by SAW working groups (federally led assessments) or ASMFC technical assessment committees (state led assessments) and peer reviewed by an independent panel of stock assessment experts called the Stock Assessment Review Committee (SARC) to determine the adequacy of benchmark stock assessments for providing a scientific basis for fisheries management. SARC panels are typically composed of a chair, who is selected from the New England or Mid-Atlantic Council's SSC, and experts selected by the CIE. Published SAW assessment reports reflect the written decisions and conclusions of the SARC panel regarding each of the assessment Terms of Reference (ToR). The SAW/SARC process is overseen by the Northeast Region Coordinating Council (NRCC). The NRCC includes high level representatives from the NEFSC, GARFO, MAFMC, NEFMC, and ASMFC. The NEFSC Science and Research Director and the NRCC are directly involved with assessment scheduling. Peer reviewed assessment results and reports from the SARC review panel are provided to the relevant Council's Technical Teams, and the SSC for use in making fishing level recommendations to the Councils.

(iii) *Terms of reference.* Peer reviewer selection takes into consideration qualifications of experts, balance of perspective, conflict of interest, and independence. ToRs for stock assessments are developed by the NEFSC in consultation with NRCC members, and with final approval by the NRCC. Benchmark stock assessments undergo a higher degree of peer review than stock assessment updates and operational stock assessments. In benchmark assessments, it is acceptable to incorporate new data sources and assessment models and assumptions. Assessment updates and operational stock assessments are more limited in this respect. They generally incorporate additional years of data into the previously accepted benchmark assessment model, with few modifications to the model or model assumptions.

(iv) *Compliance with National Standard 2.* The SAW/SARC process for conducting peer review of scientific information for fishery management is fully compliant with the NS2 guidelines.

(v) *Transparency.* SAW working group meetings, as well as the SARC peer review meetings, are open to the public. Dates and locations of these meetings are posted on a public NEFSC Web page well in advance, and peer review meetings are also announced in the **Federal Register**, and at public Council meetings. SAW working papers are made available on a public NEFSC Web page before, during, and after the peer review. Names of reviewers are posted online and paper copies of reports are available during peer reviews. A public comment period is scheduled on the SARC review meeting agenda. When the peer review is completed, published proceedings and reviewer reports are posted on public NEFSC Web pages (*http://www.nefsc.noaa.gov/publications/* and *http://www.nefsc.noaa.gov/saw/*) and public presentations are given to the Councils. A detailed description of the SAW/SARC peer review process is available to the public at: *http://www.nefsc.noaa.gov/saw/*.

(2) Southeast Data, Assessment and Review (SEDAR)

(i) *Scope and objective.* The Southeast Data, Assessment and Review (SEDAR) process has been jointly established by the NMFS Southeast Fisheries Science Center (SEFSC), NMFS Southeast Regional Office (SERO), Southeast Atlantic Fishery Management Council (SAFMC), Gulf of Mexico Fishery Management Council (GMFMC), and Caribbean Fishery Management Council (CFMC) to conduct the peer review of scientific information used for fishery management in the U.S. Southeast Atlantic, Gulf of Mexico, and Caribbean regions.

(ii) *Background.* The SEDAR is overseen by the SEDAR Steering Committee, comprised of executive directors and chairs of the GMFMC, CFMC and SAFMC; executive directors of the Atlantic and Gulf States Marine Fisheries Commissions; the SERO Administrator; and chaired by the director of the SEFSC. SEDAR seeks improvements in the quantity and scientific quality of stock assessments to address existing and emerging fishery management issues. SEDAR emphasizes transparency in the assessment review process, and a rigorous and independent scientific review of completed stock assessments. A SEDAR review is organized as three workshops: (1) A data workshop where datasets are documented, analyzed, and reviewed and data for conducting assessment analyses are compiled; (2) an assessment workshop where quantitative population analyses are developed and refined and population parameters are estimated; and (3) a review workshop where a panel of independent experts reviews the data and assessment and advises on whether the assessment is of sufficient quality for use in fisheries management.

(iii) *Terms of reference.* The terms of reference for conducting a peer review within the SEDAR process are established before the peer review by the SEFSC with the SAFMC, GMFMC, or CFMC and their SSCs.

(iv) *Compliance with National Standard 2.* The SEDAR process for conducting peer review of scientific information for fishery management is fully compliant with the NS2 guidelines.

(v) *Transparency.* All SEDAR workshops are open to the public. Public testimony is accepted in accordance with the Council Statement of Organization Practices and Procedures (SOPP). Workshop times and locations are announced in advance through the **Federal Register**. All SEDAR reports are posted on the SEDAR Web site and are hyperlinked to the respective Council(s) and the NMFS SERO and SEFSC Web sites. The SEDAR Web page is at *http://www.sefsc.noaa.gov/sedar/*. A detailed description of the SEDAR peer review process is publicly available at: *http://www.sefsc.noaa.gov/sedar/download/D2c_RW%20panelist%20instructions.pdf?id=DOCUMENT*.

(3) Stock Assessment Review (STAR)

(i) *Scope and objective.* The Stock Assessment Review (STAR) process has been jointly established by the Pacific Fishery Management Council (PFMC), NMFS Southwest Fisheries Science

Center (SWFSC), NMFS Northwest Fisheries Science Center (NWFSC), and NMFS West Coast Region (WCR) to conduct the peer review of scientific information used for fishery management of Coastal Pelagic Species and Pacific Coast Groundfish in the Pacific region.

(ii) *Background.* The STAR peer review process is primarily overseen by the PFMC's SSC and conducted in collaboration with the NWFSC and SWFSC. It is a transparent, rigorous and independent scientific peer review process designed to evaluate the technical merits of benchmark stock assessments and related scientific information. The STAR process allows the Council to make timely use of new fishery and survey data, ensure the stock assessments represent the best information for fishery management decisions and provide opportunity for public comment. STAR Panels are held early in the management process to ensure their recommendations are readily available for fishery management decision-making. The relevant SSC subcommittees typically review updated and data-moderate assessments, although STAR panels may be used as needed.

(iii) *Terms of reference.* The ToR for the Groundfish and Coastal Pelagic Species Stock Assessment and Stock Assessment Review Process is updated by the PFMC in partnership with NMFS. The ToR describes the STAR process and includes an overview of the stock assessment prioritization process, STAR Panel goals and objectives, roles and responsibilities of STAR participants, as well as a calendar of events with a list of deliverables for final approval by the Council. The ToR is publicly available on the PFMC's Web site.

(iv) *Compliance with National Standard 2.* The STAR process for conducting peer review of scientific information for fishery management is fully compliant with the NS2 guidelines.

(v) *Transparency.* STAR panel review meetings are open to the public and background materials are publicly available. Public testimony is accepted in accordance with the PFMC's Statement of Organization Practices and Procedures (SOPP). STAR Panel meeting times and locations are announced in advance through the **Federal Register**. STAR panel review reports are posted on the Council's Web site. More detailed information about the STAR process can be found on the Council's Web site at: *http://www.pcouncil.org* and its ToRs can be found at *http://www.pcouncil.org/wp-content/uploads/Stock_Assessment_ToR_2013-14_Final.pdf.*

(4) North Pacific Stock Assessment Review

(i) *Scope and objective.* The North Pacific Stock Assessment Review (NPSAR) process has been jointly established by the NMFS Alaska Fisheries Science Center (AFSC), NMFS Alaska Regional Fisheries Office (AKRO), and North Pacific Fishery Management Council (NPFMC) to conduct the peer review of scientific information used for fishery management in the North Pacific region. The NPFMC's SSC reviews are the main scientific analyses that come before the Council for action, including stock assessment and fishery evaluation (SAFE) documents. The NPFMC's SSC has a set of guidelines that it uses specifically when reviewing SAFE documents.

(ii) *Background.* The AFSC is responsible for stock assessments for about 25 species or species groups listed in the groundfish fishery management plan (FMP) for the Gulf of Alaska (GOA) and approximately 25 species or species groups in the Bering Sea/Aleutian Islands FMP. The State of Alaska Department of Fish and Game (ADFG) has responsibility for one groundfish stock assessment in the GOA FMP and all assessment responsibility for Scallops. The AFSC and ADFG share assessment responsibilities for the 10 species in the Bering Sea crab FMP. Scientific recommendations for these living marine resources are provided by the NPFMC with various management authorities delegated to the State of Alaska for crab and scallop fisheries. The SAFE report is compiled by the Plan Teams (which are scientific review bodies specific to each FMP) with contributions that include individual stock assessment, economic, and ecosystem chapters from AFSC and ADFG. The SAFE is disseminated by the NPFMC and describes the condition and current status of these resources in addition to information that summarizes the ecosystem and economic status. The stock assessment, economic, and ecosystem chapters are subject to internal review before dissemination to the FMP Plan Teams and the Council's SSC. The information is provided to the NPFMC and ADFG to be used as the basis of their management decisions, which are subsequently approved by NMFS.

The stock assessment process begins with an annual memo from the AFSC stock assessment supervisors to staff outlining the dates for completion of the stock assessment chapters for internal review and the list of internal reviewers for each assessment. Stock assessments authored by ADFG follow a similar process. After review and revision, the draft stock assessment chapters are released for pre-dissemination review by the NPFMC Plan Team. The Plan Teams review stock assessments and associated ecosystem and economic appendices, compile the SAFE reports and make recommendations to the SSC. The SSC reviews the SAFEs and the Plan Team recommendations and sets the fishing level recommendations for each stock. The members of the NPFMC SSC represent broad areas of scientific expertise to encompass the full range of expertise required to review analyses that come to the Council to aid in decision-making. SSC members are nominated by individuals or agencies and are appointed and re-appointed annually by the NPFMC. Review assignments are made by the SSC chair to ensure that members are not assigned to review work products of individuals in their chain of command. In addition to the normal schedule of assessment updates and reviews, a separate review schedule involving the CIE is maintained, with the goal of obtaining a CIE review of all stock assessments once every five years.

(iii) *Terms of reference.* The ToRs for conducting a peer review within the NPSAR process is established before the peer review by the AFSC in conjunction with the NPFMC.

(iv) *Compliance with National Standard 2.* The NPSAR process for conducting peer review of scientific information for fishery management is fully compliant with the NS2 guidelines.

(v) *Transparency.* SAFE documents are made available to the Plan Team two weeks prior to the Plan Team meeting in which they are to be reviewed. The public is also given public access to these documents and are allowed to attend Plan Team and SSC meetings. Notification of Plan Team meetings is provided in the **Federal Register**. Similarly, all documents reviewed by the SSC are made available to the public. This includes SAFE documents and Plan Team reports provided to the SSC in advance of the meeting in which the SSC makes ABC/OFL recommendations. The SSC publicly presents the findings of its report to the NPFMC at its meeting. When the SSC is making ABC/OFL recommendations for groundfish, the SSC report also characterizes the nature of any public testimony provided to the SSC at its meeting. The final SAFE is also published on the NPFMC Web page. More detailed information for the North

Pacific Stock Assessment Review process is publicly available at: *http://www.npfmc.org/wp-content/PDFdocuments/resources/SAFE/AFSCsafeReviewProcess.pdf.*

(5) Western Pacific Stock Assessment Review (WPSAR)

(i) *Scope and objective.* The Western Pacific Stock Assessment Review (WPSAR) process has been jointly established by the NMFS Pacific Islands Fisheries Science Center (PIFSC), NMFS Pacific Islands Regional Fisheries Office (PIRO), and Western Pacific Fishery Management Council (WPFMC) to conduct the peer review of scientific information used for fishery management in the Pacific Islands Region.

(ii) *Background.* The WPSAR process was established to improve the quality and reliability of stock assessments for fishery resources in the Pacific Islands region. The process provides for rigorous and independent scientific review of stock assessments, and encourages constituent/stakeholder participation in stock assessment reviews. A five-year planning horizon is adopted to facilitate the timely execution of critical data collection activities, population dynamics model development, and stock evaluation exercises. The WPFMC, PIFSC and PIRO share the fiscal and logistical responsibilities of the WPSAR process. The WPFMC sponsors the review process, and PIFSC, PIRO and WPFMC staff coordinate and facilitate the review process in the Coordinating Committee. Specifically, the Coordinating Committee consults with the WPSAR Steering Committee, which is comprised of WPFMC, PIFSC, PIRO leadership, to develop the WPSAR schedule, prepare terms of reference, convene the review panels, and any other duties deemed pertinent by the Steering Committee. The WPSAR process adopts a three tier approach for the review and acceptance of stock assessment research products. The tiers differ in form, timing, scope, and panel membership, commensurate with the novelty and complexity of the information under review. Under Tier 1, CIE reviewers conduct independent peer reviews of new stock assessment methodologies and, in special circumstances, international stock assessments in accordance with the specified terms of reference. The application of new methodologies and benchmark assessments fall under Tier 2 which utilizes panel independent subject matter experts. Tier 3 is used for assessment updates, where only new data are added to an existing and approved assessment.

The Coordinating Committee, in consultation with the WPSAR Steering Committee, identifies and selects expert panel members. The selected panel reviews the products in accordance with the associated terms of reference. A standing member of the Council's SSC will chair each WPSAR Tier 2 Review Panel and provide a summary report. Each individual reviewer produces and provides a report regarding their unique findings.

(iii) *Terms of reference.* The terms of reference are developed before each review, and identify the specific assessment parameters to be addressed during that review.

(iv) *Compliance with National Standard 2.* The WPSAR process for conducting peer review of scientific information for fishery management is fully compliant with the NS2 guidelines.

Tier 1 reviews will be conducted by the CIE, in accordance with CIE protocols (*http://ciereviews.org/*). For Tier 2 reviews, the panel will consist of three to five experts, the exact size determined by the WPSAR Coordinators and approved by the Steering Committee. The Tier 2 Review's Chair will be a standing member of the Council's SSC, and appointed by the Steering Committee. In addition, all reviewers must meet qualifications required for the peer review. The independent reviewers can come from the CIE, academia, or be nominated by the public. Reviewers will be selected in accordance with NS2 peer reviewer selection guidelines (50 CFR 600.315(b)(2) and (c)(2)), and in accordance NOAA's Conflict of Interest Policy. Like a Tier 2 panel, Tier 3 panels will consist of three to five experts, the exact size determined by the WPSAR Coordinators and approved by the Steering Committee. Under Tier 3 only, the Steering Committee may unanimously agree to a WPRFMC SSC/PIFSC-only review.

(v) *Transparency.* All meetings are open to the public, and will be announced in the **Federal Register** with a minimum of 14 days before a review. More detailed information for the WPSAR process is publicly available at *http://www.pifsc.noaa.gov/peer_reviews/wpsar/index.php.*

Other peer review processes. In addition to the peer review processes described above, NMFS uses other important peer review processes to ensure the use of the BSIA for fishery management decisions. While these processes provide critical peer review of scientific information, NMFS is not identifying them as jointly established peer review processes for purposes of MSA section 302(g)(1)(E). Many of these other peer review processes are used in connection with transboundary and/or internationally-managed species under legal authorities other than the MSA. Examples include Atlantic tuna and tuna-like species managed pursuant to the International Convention for the Conservation of Atlantic Tuna; tropical Pacific tuna managed by the Inter-American Tropical Tuna Commission; Atlantic and Pacific salmon and Pacific hake/whiting, all managed in conjunction with Canada. Lack of inclusion on the list of MSA § 302(g)(1)(E) peer review processes does not in any way diminish the integrity of those peer review processes or NMFS' confidence in and reliance on them for review of scientific information.

Dated: August 10, 2016.

Ned Cyr,

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 2016–19522 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2016–0024]

Changes in Accelerated Examination Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In 2006, the United States Patent and Trademark Office (USPTO or Office) introduced the accelerated examination program to permit an application to be advanced out of turn if the applicant files a grantable petition under the program. Since its institution, the patent landscape has witnessed numerous legal changes such as the America Invents Act (AIA), the Patent Law Treaties Implementation Act (PLTIA) implementing the provisions of the Patent Law Treaty (PLT), and the USPTO's adoption of the Cooperative Patent Classification system (CPC) along with changes to USPTO systems. Accordingly, the Office is updating the accelerated examination program to reflect these changes in the law and examination practice.

DATES: Effective on August 16, 2016.

FOR FURTHER INFORMATION CONTACT: Pinchus M. Laufer, Senior Legal Advisor ((571) 272 7726) or Matthew Sked, Legal Advisor ((571) 272–7627), Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Notice

The USPTO published a notice in June 2006 (2006 AE Notice) to implement the accelerated examination program under which an application will be advanced out of turn for examination if the applicant files a petition to make special with the appropriate showing. *See Changes in Practice for Petitions in Patent Applications To Make Special and for Accelerated Examination,* 71 FR 36323 (June 26, 2006). This showing requires the applicant to meet several conditions, including conducting a pre-examination search, providing an accelerated examination support document (AESD), and requiring the application be complete under 37 CFR 1.51 at the time of filing. In light of recent changes in the law such as the America Invents Act (AIA), Patent Law Treaties Implementation Act (PLTIA) to implement the provisions of the Patent Law Treaty (PLT) and the conversion to the Cooperative Patent Classification system (CPC), some of the requirements and practices of the program reflected in the 2006 AE Notice are no longer appropriate. Therefore, the program is being updated to account for these changes. The full updated accelerated examination guidelines may be found on the accelerated examination Web page (*http://www.uspto.gov/patent/initiatives/accelerated-examination*) and in a forthcoming update to the Manual of Patent Examining Procedure (MPEP). In particular, the changes are explained beginning at Section I.A of this notice. Subsequent to the implementation of the AE program in 2006, the Office implemented the prioritized examination program (referred to as "Track I") provided for in the AIA in a final rule published on September 23, 2011. See *Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures under the Leahy-Smith America Invents Act,* 76 FR 59050 (September 23, 2011). Since implementation of Track I in 2011, the USPTO has received fewer than 200 AE requests annually. In view of the relatively low usage of the AE program, the USPTO plans to publish a request for comments in the **Federal Register** to seek public input on whether there is value in retaining the AE program in view of the more popular Track I program.

A. Pre-Examination Search

The 2006 AE Notice requires that the pre-examination search include a classification search of the United States Patent Classification system (USPC) by class and subclass. 71 FR at 36324. However, the USPTO has since harmonized its classification system for utility applications with Europe to create a common classification scheme known as the CPC. Therefore, a classified search of U.S. patents and published patent applications would need to include the relevant group(s)/subgroup(s) of the CPC rather than the class(es)/subclass(es) of the USPC. Applicants should consult with the USPTO's classification resources to determine the relevant group(s)/subgroup(s) of the CPC to consider. The classification resources may be found in Chapter 900 of the MPEP (*http://www.uspto.gov/web/offices/pac/mpep/documents/0900.htm*) and the Office of Patent Classification Home Page (*http://www.uspto.gov/patents-application-process/patent-search/classification-standards-and-development*). It is noted that a pre-examination search regarding a design application should continue to use the USPC because the CPC only applies to utility applications.

B. Accelerated Examination Support Document

The accelerated examination support document (AESD) was previously required to contain an indication of whether any cited references may be disqualified as prior art under pre-AIA 35 U.S.C. 103(c) as amended by the Cooperative Research and Technology Enhancement (CREATE) Act (Pub. L. 108–453, 118 Stat. 3596 (2004)). 71 FR at 36325. In 2011, the AIA was enacted, which amended 35 U.S.C. 103 to remove subsection (c). Instead, applicants enjoy a common ownership and obligation of assignment exception to prior art under AIA 35 U.S.C. 102(b)(2)(C). Therefore, an application that is subject to examination under AIA 35 U.S.C. 102 and 103 would need to, instead, include an indication in the AESD whether any of the cited prior art may be disqualified as prior art under 35 U.S.C. 102(b)(2)(C). Applications that are subject to examination under pre-AIA 35 U.S.C. 102 and 103 would need to continue to indicate whether any of the cited references are disqualified as prior art under pre-AIA 35 U.S.C. 103(c). Applicants should consult MPEP 2159 in ascertaining whether the application is subject to examination under pre-AIA or AIA 35 U.S.C. 102 and 103. Applicants are reminded, that if the application is filed on or after March 16, 2013, and claims the benefit of or priority to an application where the filing date of a foreign, U.S. provisional, U.S. nonprovisional, or international application is prior to March 16, 2013, it is necessary for the applicant to specify whether pre-AIA or AIA 35 U.S.C. 102 and 103 applies.

It is noted that further minor changes have been made to the 2006 AE Notice to reflect changes made by the AIA such as the citation change of 35 U.S.C. 112(a) and (f) and the appeal board's designation as the Patent Trial and Appeal Board (PTAB).

C. Reply by Applicant

The 2006 AE Notice provides shortened statutory periods of one month or thirty days, whichever is longer, without extensions under 37 CFR 1.136(a). 71 FR at 36325, 36327. This provision of the 2006 AE Notice was updated in 2013, when the Office issued a final rule to implement the PLT stating: "The Office is revising the Accelerated Examination program to provide that Office actions (other than a notice of allowance) will set a shortened statutory period for reply of at least two months. In addition, extensions of this shortened statutory period under 37 CFR 1.136(a) will be permitted, but filing a petition for an extension of time will result in the application being taken out of the Accelerated Examination program." *Changes To Implement the Patent Law Treaty,* 78 FR 62368, 62373 (Oct. 21, 2013).

D. Complete Application Upon Filing

In listing the conditions that must be met at the time of filing, the 2006 AE Notice states that no petition under 37 CFR 1.47 for a non-signing inventor may be present. 71 FR at 36327. However, in implementing the AIA, 37 CFR 1.47 was removed and 37 CFR 1.46 was amended to allow an assignee, an obligated assignee, or a person who otherwise shows sufficient proprietary interest in the matter to make an application for patent. Included among the amendments to 37 CFR 1.46 is a provision in 37 CFR 1.46(b)(2) that requires a petition in order to designate a person with sufficient proprietary interest as the applicant. Thus, the conditions for participation in the AE are hereby revised to preclude any petition under 37 CFR 1.46(b)(2) to designate a person with sufficient proprietary interest as the applicant. In fact, applicant should refrain from filing any petition that would delay the processing of the application including a petition under 37 CFR 1.78 to accept a delayed benefit claim.

Additionally, the 2006 AE Notice states that a foreign priority claim under 35 U.S.C. 119(a)–(d) should be identified in the executed oath or declaration or an application data sheet (if applicable). 71 FR at 36326. Further, the 2006 AE notice also states that any domestic benefit claim must be in the first sentence of the specification or in an application data sheet. 71 FR at 36326. However, after the AIA, current rules require all domestic benefit and foreign priority claims to be made in the application data sheet (except for foreign priority claim in a national stage application under 35 U.S.C. 371) (*see* 37 CFR 1.55 and 1.78). Therefore, any priority claim would need to be made in an application data sheet under 37 CFR 1.76.

Finally, the 2006 AE Notice requires the applicant to file using the USPTO's electronic filing system (EFS) or EFS-Web. The USPTO's original electronic filing system (EFS) was discontinued. Therefore, applicants will need to file their accelerated examination applications through EFS-Web.

It is noted that an executed oath or declaration is no longer a condition for examination after the AIA. However, it is a requirement under 37 CFR 1.51 and will need to be present upon filing for entry in the program. A missing oath or declaration will not result in a notice to file missing parts when the application is reviewed by the Office of Patent Application Processing (OPAP). Nonetheless, the presence of the oath or declaration in compliance with 37 CFR 1.63 or substitute statement in compliance with 37 CFR 1.64 will subsequently be reviewed in the Technology Centers by the Quality Assurance Specialist (QAS) office. Failure to have a compliant oath, declaration, or substitute statement upon filing will prevent the application from being accorded special status.

II. Changes to the 2006 AE Notice

As detailed above, the 2006 AE Notice has been modified to reflect changes in law and examination practice. The changes are set out below as paragraphs that replace paragraphs in the original notice.

The changes in *Part I* are as follows:

71 FR at 36324, col. 2, fifth paragraph ("(3) . . .") is replaced with the following:

(3) The application, petition, and required fees must be filed electronically using the USPTO's electronic filing system (EFS-Web). If the USPTO's EFS-Web is not available to the public during the normal business hours for the system at the time of filing the application, applicant may file the application, other papers, and fees by mail accompanied by a statement that EFS-Web was not available during the normal business hours, but the final disposition of the application may occur later than twelve months from the filing of the application. See Part VIII (subsection The Twelve-Month Goal) for more information.

71 FR at 36324, col. 3, fourth paragraph ("(8) . . .") is replaced with the following:

(8) At the time of filing, applicant must provide a statement that a preexamination search was conducted, including an identification of the field of search (*i.e.*, group/subgroup of the CPC for utility applications and class/subclass of the USPC for design applications) and the date of the search, where applicable, and for database searches, the search logic or chemical structure or sequence used as a query, the name of the file or files searched and the database service, and the date of the search.

71 FR at 36325, col. 1–2, ninth paragraph ("(E) . . .") is replaced with the following:

(E) The accelerated examination support document must include a showing of where each limitation of the claims finds support under 35 U.S.C. 112(a) in the written description of the specification. If applicable, the showing must also identify: (1) Each means- (or step-) plus-function claim element that invokes consideration under 35 U.S.C. 112(f); and (2) the structure, material, or acts in the specification that correspond to each means- (or step-) plus-function claim element that invokes consideration under 35 U.S.C. 112(f). If the application claims the benefit of one or more applications under title 35, United States Code, the showing must also include where each limitation of the claims finds support under 35 U.S.C. 112(a) in each such application in which such support exists.

71 FR at 36325, col. 2, first paragraph ("(F) . . .") is replaced with the following:

(F)(1) For an application that is subject to examination under the pre-AIA 35 U.S.C. 102 and 103: The accelerated examination support document must identify any cited references that may be disqualified as prior art under pre-AIA 35 U.S.C. 103(c) as amended by the Cooperative Research and Technology Enhancement (CREATE) Act (Pub. L. 108–453, 118 Stat. 3596 (2004)).

(F)(2) For an application that is subject to examination under AIA 35 U.S.C. 102 and 103: The accelerated examination support document must identify any cited references that may be disqualified as prior art under 35 U.S.C. 102(b)(2)(C).

The changes in *Part III* are as follows:

71 FR at 36325, col. 3, second paragraph ("If an . . .") is replaced with the following:

If an Office action other than a notice of allowance is mailed, the Office action will set a shortened statutory period of two (2) months. Extensions of time under the provisions of 37 CFR 1.136(a) will be permitted, but will result in the application being taken out of the program. Failure to timely file a reply will result in abandonment of the application. See Parts V and VI for more information on post-allowance and after-final procedures.

The changes in *Part VI* are as follows:

71 FR at 36326, col. 1–2, third paragraph ("*After-Final and Appeal Procedures*") is replaced with the following:

After-Final and Appeal Procedures: The mailing of a final Office action or the filing of a notice of appeal, whichever is earlier, is the final disposition for purposes of the twelve-month goal for the program. Prior to the mailing of a final Office action, the USPTO will conduct a conference to review the rejections set forth in the final Office action (*i.e.*, the type of conference conducted in an application on appeal when the applicant requests a pre-appeal brief conference). In order for the application to be expeditiously forwarded to the Patent Trial and Appeal Board (PTAB) for a decision, applicant must: (1) Promptly file the notice of appeal, appeal brief, and appeal fees; and (2) not request a pre-appeal brief conference. A pre-appeal brief conference would not be of value in an application under a final Office action because the examiner will have already conducted such a conference prior to mailing the final Office action. During the appeal process, the application will be treated in accordance with the normal appeal procedures. The USPTO will continue to treat the application special under the accelerated examination program after the decision by the PTAB.

The changes in *Part VIII* are as follows:

71 FR at 36326, col. 3, ninth paragraph ("(G) . . .") is replaced with the following:

(G) Electronic submissions of sequence listings in compliance with 37 CFR 1.821(c) or (e), large tables, or computer listings in compliance with 37 CFR 1.96, submitted via the USPTO's electronic filing system (EFS-Web) in ASCII text as part of an associated file (if applicable);

71 FR at 36326, col. 3, tenth paragraph ("(H) . . .") is replaced with the following:

(H) Foreign priority claim under 35 U.S.C. 119(a)–(d) identified in the application data sheet (if applicable);

71 FR at 36326–27, col. 3, eleventh paragraph ("(I) . . .") is replaced with the following:

(I) Domestic benefit claims under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) in compliance with 37 CFR 1.78 (*e.g.,* the specific reference to the prior application must be submitted in an application data sheet, and for any benefit claim to a non-English language provisional application, the application must include a statement that: (a) An English language translation, and (b) a statement that the translation is accurate, have been filed in the provisional application) (if applicable);

71 FR at 36327, col. 1, third paragraph ("(L) . . .") is replaced with the following:

(L) No petition under 37 CFR 1.46(b)(2) to designate a person with sufficient proprietary interest as the applicant.

71 FR at 36327, col. 1, fifth paragraph ("Applicant should . . .") is replaced with the following:

Applicant should also provide a suggested classification (*i.e.,* group/subgroup of the Cooperative Patent Classification for utility applications or class/subclass of the U.S. Patent Classification for design applications) for the application on the transmittal letter, petition, or an application data sheet as set forth in 37 CFR 1.76(b)(3) so that the application can be expeditiously processed.

71 FR at 36327, col. 1, sixth paragraph ("*The petition* . . .") is replaced with the following:

The petition to make special will be dismissed if the application omits an item or includes a paper that causes the Office of Patent Application Processing (OPAP) to mail a notice during the formality review (*e.g.,* a notice of incomplete application, notice to file missing parts, notice to file corrected application papers, notice of omitted items, or notice of informal application). The opportunity to perfect a petition (Part II) does not apply to applications that are not in condition for examination on filing.

71 FR at 36327, col. 1, seventh paragraph ("*Reply Not* . . .") is replaced with following:

Reply Not Fully Responsive: If a reply to a non-final Office action is not fully responsive, but a bona fide attempt to advance the application to final action, the examiner may provide two (2) months for applicant to supply the omission or a fully responsive reply. Extensions of time under the provisions of 37 CFR 1.136(a) are permitted, but will result in the application being taken out of the program. Failure to timely file the omission or a fully responsive reply will result in abandonment of the application.

If the reply is not a bona fide attempt, no additional time period will be given. The time period set forth in the previous Office action will continue to run.

Dated: August 10, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–19527 Filed 8–15–16; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). SEAB was reestablished pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: September 22, 2016, 8:30 a.m.–12:30 p.m.

ADDRESSES: Department of Energy, 1000 Independence Avenue SW., Room 1E–245, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Karen Gibson, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues, and other activities as directed by the Secretary.

Purpose of the Meeting: This meeting is the quarterly meeting of the Board.

Tentative Agenda: The meeting will start at 8:30 a.m. on September 22nd. The tentative meeting agenda includes: Updates from SEAB's task forces, approval of SEAB reports, informational briefings, and an opportunity for comments from the public. The meeting will conclude at 12:30 p.m. Agenda updates will be posted on the SEAB Web site prior to the meeting: *www.energy.gov/seab.*

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Karen Gibson no later than 5:00 p.m. on Tuesday, September 20, 2016 at *seab@hq.doe.gov.* Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government issued identification. Please note that the Department of Homeland Security (DHS) has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include:

- U.S. Passport or Passport Card
- An Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License)
- A military ID or other government issued Photo-ID card

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8:15 a.m. on September 22nd.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Karen Gibson, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, email to *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB Web site or by contacting Ms. Gibson. She may be reached at the postal address or email address above, or by visiting SEAB's Web site at *www.energy.gov/seab.*

Issued in Washington, DC, on August 10, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–19495 Filed 8–15–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 22, 2016 from 3:30 p.m. to 4:30 p.m. (EDT). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Michael Li, Policy Advisor, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number 202–287–5718, and email *michael.li@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Receive STEAB Task Force updates on action items and revised objectives for FY 2016, discuss follow-up opportunities and engagement with EERE and other DOE staff as needed to keep Task Force work moving forward, continue engagement with DOE, EERE and EPSA staff regarding energy efficiency and renewable energy projects and initiatives, and receive updates on member activities within their states. Discuss plans for transition document.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Michael Li at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: *http://www.energy.gov/eere/steab/state-energy-advisory-board.*

Issued at Washington, DC, on August 10, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–19496 Filed 8–15–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Tuesday, September 20, 2016, 8:30 a.m.–5:30 p.m.

Wednesday, September 21, 2016, 8:30 a.m.–12:00 p.m.

ADDRESSES: Holiday Inn Capital, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christine Chalk, Office of Advanced Scientific Computing Research; SC–21/Germantown Building; U. S. Department of Energy; 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone (301) 903–7486.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice and guidance on a continuing basis to the Office of Science and to the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Purpose of the Meeting: This meeting is the semi-annual meeting of the Committee.

Tentative Agenda Topics

- View from Germantown
- New Charge—Laboratory Directed Research and Development
- Exascale update
- X-stack Principal Investigator Meeting
- Summary of workshop on Management, Analysis and Visualization of Experimental and Observational Data
- Technical presentations
- Public Comment (10-minute rule)

The meeting agenda includes a new charge for the committee to review the Laboratory Director Research and Development efforts at the National Labs; an update on the budget, accomplishments and planned activities of the Advanced Scientific Computing Research program; an update on exascale computing research activities; information on recent workshops exploring the management, analysis and visualization of experimental and observational data; a technical presentation from an exascale researcher; and an opportunity for comments from the public. The meeting will conclude at noon on September 21, 2015. Agenda updates and presentations will be posted on the ASCAC Web site prior to the meeting: *http://science.energy.gov/ascr/ascac/.*

Public Participation: The meeting is open to the public. Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 10 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Those wishing to speak should submit your request at least five days before the meeting. Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christine Chalk, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, email to *Christine.Chalk@science.doe.gov.*

Minutes: The minutes of this meeting will be available within 90 days on the Advanced Scientific Computing Web site at *http://science.energy.gov/ascr/ascac/.*

Issued at Washington, DC, on August 9, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–19426 Filed 8–15–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice sets forth the schedule and summary agenda for a conference call of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: September 1, 2016, 12:00 p.m. to 1:00 p.m.

ADDRESSES: To receive the call-in information, attendees should register for the conference call on the PCAST Web site, *http://www.whitehouse.gov/ostp/pcast* no later than 1:00 p.m. (ET), Monday, August 29, 2016.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* Questions about the meeting should be directed to Ms. Jennifer Michael at *Jennifer_L_Michael@ostp.eop.gov,* (202) 456–4444.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to hold a public conference call on September 1, 2016 from 12:00 p.m. to 1:00 p.m.

Open Portion of Meeting: During this open meeting, PCAST is scheduled to vote on its biodefense and forensics studies. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on September 1, 2016 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 1:00 p.m. Eastern Time on August 29, 2016. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 1:00 p.m. (Eastern Time) on August 29, 2016, so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Ms. Jennifer Michael at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on August 11, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–19499 Filed 8–15–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, August 31, 2016 8:00 a.m.–5:00 p.m. Thursday, September 1, 2016 8:00 a.m.–12:00 p.m.

ADDRESSES: Las Vegas Marriott, 325 Convention Center Drive, Las Vegas, Nevada 89109.

FOR FURTHER INFORMATION CONTACT: David Borak, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Phone: (202) 586–9928.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics

Wednesday, August 31, 2016
- ○ EM Program Update
- ○ EM SSAB Chairs' Round Robin
- ○ Waste Disposition

Thursday, September 1, 2016
- ○ DOE Headquarters News and Views
- ○ Budget and Strategic Communications
- ○ Board Business

Public Participation: The EM SSAB Chairs welcome the attendance of the public at their advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Borak at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, David Borak, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact David Borak. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Borak at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.em.doe.gov/stakepages/ssabchairs.aspx.*

Issued at Washington, DC, on August 9, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–19425 Filed 8–15–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 8, 2016, 6:00 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of May Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
  - ○ Draft Recommendation 16–02: Priorities for the President's Fiscal Year 2018 Budget Request
    - Public Comments on Recommendation
    - Board Comments on Recommendation
  - ○ Update on Annual Executive Planning and Leadership Training Session
- EM SSAB Chairs Meeting Update
- Election of Chair and Vice Chair
- Adoption of Fiscal Year 2017 Work Plan
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC, on August 9, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–19423 Filed 8–15–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR16–12–000]

Grand Mesa Pipeline, LLC; Notice of Amended Petition for Declaratory Order

Take notice that on August 9, 2016, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2015), Grand Mesa Pipeline, LLC (Grand Mesa), a subsidiary of NGL Energy Partners LP, filed an amended petition for a declaratory order to provide greater shipper flexibility and make further changes, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on August 22, 2016.

Dated: August 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19471 Filed 8–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–103–000]

Panda Patriot LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On August 10, 2016, the Commission issued an order in Docket No. EL16–103–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of the Panda Patriot LLC's Reactive Service rates. *Panda Patriot LLC,* 156 FERC ¶ 61,103 (2016).

The refund effective date in Docket No. EL16–103–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL16–103–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: August 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19470 Filed 8–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD16–8–000]

Commission Information Collection Activities (FERC–725I); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, COE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the information collection, FERC–725I (Mandatory Reliability Standards for the Northeast Power Coordinating Council) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due October 17, 2016.

ADDRESSES: You may submit comments (identified by Docket No. RD16–8–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725I, Mandatory Reliability Standards for the Northeast Power Coordinating Council.

OMB Control No.: 1902–0258.

Type of Request: Three-year approval of the FERC–725I information collection requirements, as modified.

Abstract: On June 9, 2016, the North American Electric Reliability Corporation (NERC) and the Northeast Power Coordination Council, Inc. ("NPCC") filed a petition for Commission approval, pursuant to section 215(d)(1) of the Federal Power Act ("FPA")[1] and Section 39.5[2] of the Federal Energy Regulatory Commission's regulations, of the retirement of NPCC Regional Reliability Standard PRC–002–NPCC–01 (Disturbance Monitoring) and the two related NPCC regional definitions, Current Zero Time and Generating Plant.

Type of Respondents: Public utilities.

Estimate of Annual Burden:[3] The Commission estimates the reduction (due to the retirement of Reliability Standard PRC–002–NPCC–01) in the annual public reporting burden for the information collection as follows:

---

[1] 16 U.S.C. 824o (2012).

[2] 18 CFR 39.5 (2015).

[3] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

Information collection requirements	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden (hours) (4)	Total annual burden (hours) (3)*(4)=(5)
R13: GO[4] and TO to have evidence it acquired and installed dynamic disturbance recorders and a mutually agreed upon implementation schedule with the RC (record retention)	1	1	1	10	10
R14.5: GO and TO to have evidence of a maintenance and testing program for stand-alone disturbance monitoring equipment including monthly verification of active analog quantities	169	12	2028	5	10,140
R14.7: GO and TO to record efforts to return failed units to service if it takes longer than 90 days[5]	33	1	33	10	330
R14.7: GO and TO record retention	33	1	33	10	330
R17: RC provide certain disturbance monitoring equipment data to the Regional Entity upon request	5	1	5	5	25
R17: RC record retention	5	1	5	10	50
Total Reductions	....	....	2,105	....	10,885

[4] For purposes of these charts, generation owner is abbreviated to GO, transmission owner is abbreviated to TO, reliability coordinator is abbreviated to RC, and planning coordinator is abbreviated to PC.

[5] We estimate that an entity will experience a unit failure greater than 90 days once every five years. Therefore, 20 percent of NPCC's 169 generator owners and transmission owners will experience a unit failure of this duration each year.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19474 Filed 8–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3452–016]

Erie Boulevard Hydropower, L.P; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Application:* Notice of Intent To File License Application and Request To Use the Traditional Licensing Process.

b. *Project No.:* P–3452–016.

c. *Date filed:* June 28, 2016.

d. Submitted by: Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Oak Orchard Hydroelectric Project.

f. *Location:* on the New York State Barge Canal and Oak Orchard Creek in the village of Medina in the town of Ridgeway, Orleans County, New York. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Steven Murphy, Manager, Licensing, Brookfield Renewable, 33 West 1st Street South, Fulton, New York 13069, Phone: (315) 598–6130; Email: *steven.murphy@brookfieldrenewable.com* or Jon Elmer, Director of Operations, Brookfield Renewable, 800 Starbuck Ave., Suite 201, Watertown, New York 13601, Phone: (315) 779–2401, Email: *jon.elmer@brookfieldrenewable.com.*

i. *FERC Contact:* Brandi Sangunett, Phone: (202) 502–8393, Email: *brandi.sangunett@ferc.gov.*

j. Erie Boulevard Hydropower, L.P filed its request to use the Traditional Licensing Process on June 28, 2016. Erie Boulevard Hydropower, L.P provided public notice of its request on June 26, 2016. In a letter dated August 10, 2016, the Director of the Division of Hydropower Licensing approved Erie Boulevard Hydropower, L.P.'s request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New York State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Erie Boulevard Hydropower, L.P as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Erie Boulevard Hydropower, L.P filed a Pre-Application Document (PAD; including a proposed process plan and schedule) that also serves as the draft license application, with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD/DLA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 3452–016. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2019.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: August 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19472 Filed 8–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–134–000.
Applicants: ID Solar 1, LLC.
Description: Notice of Self-Certification of ID Solar 1, LLC of Exempt Wholesale Generator Status.
Filed Date: 8/10/16.
Accession Number: 20160810–5185.
Comments Due: 5 p.m. ET 8/31/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2398–000.
Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.
Description: Section 205(d) Rate Filing: 2016–08–10_SA 2936 Ameren Illinois-Norris Electric Coop Switching Agreement to be effective 8/2/2016.
Filed Date: 8/10/16.
Accession Number: 20160810–5146.
Comments Due: 5 p.m. ET 8/31/16.

Docket Numbers: ER16–2399–000.
Applicants: Sierra Pacific Power Company.
Description: Tariff Cancellation: Rate Schedule No. 64 SPPC and Mt Wheeler EPC Termination to be effective 8/11/2016.
Filed Date: 8/10/16.
Accession Number: 20160810–5176.
Comments Due: 5 p.m. ET 8/31/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19467 Filed 8–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–105–000]

The Goodyear Tire & Rubber Company v. Entergy Texas, Inc.; Notice of Complaint

Take notice that on August 9, 2016, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2012) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, The Goodyear Tire & Rubber Company (Goodyear or Complainant) filed a formal complaint against Entergy Texas, Inc., (ETI or Respondent) alleging that the Respondent's proposed termination of the Agreement for Purchased Power between Goodyear and ETI (PPA) is contrary to ETI's obligation to purchase energy and capacity from Goodyear pursuant to section 292.303 of Commission's regulations implementing the Public Utility Regulatory Policies Act, and the Commission's January 21, 2016 Order, granting in part, ETI's application to terminate its mandatory purchase obligation,[1] as more fully explained in the complaint.

Complainant certifies that copies of the complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials, as well as through individuals who send and receive notices under the PPA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 25, 2016.

Dated: August 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19468 Filed 8–15–16; 8:45 am]

BILLING CODE 6717–01–P

---

[1] *Entergy Services, Inc., et al.,* 154 FERC ¶ 61,035 (2016) ("January 21 Order"). The application was filed by Entergy Services, Inc. on behalf of ETI and other subsidiaries; this complaint refers to the application as being filed by ETI.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Ic16–14–000]

Commission Information Collection Activities (FERC–604 and FERC–923); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the requirements and burden[1] of the information collections described below.

DATES: Comments on the collections of information are due October 17, 2016.

ADDRESSES: You may submit comments (identified by Docket No. IC16–14–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Please reference the specific collection number and/or title in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements for all collections described below with no changes to the current reporting requirements. Please note that each collection is distinct from the next.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FERC–604, Cash Management Agreements

OMB Control No.: 1902–0267.

Abstract: Cash management or "money pool" programs typically concentrate affiliates' cash assets in joint accounts for the purpose of providing financial flexibility and lowering the cost of borrowing.

In a 2001 investigation, FERC staff found that balances in cash management programs affecting FERC-regulated entities totaled approximately $16 billion. Additionally, other investigations revealed large transfers of funds (amounting to more than $1 billion) between regulated pipeline affiliates and non-regulated parents whose financial conditions were precarious. The Commission found that these and other fund transfers and the enormous (mostly unregulated) pools of money in cash management programs could detrimentally affect regulated rates.

To protect customers and promote transparency, the Commission issued Order 634–A (2003) requiring entities to formalize in writing and file with the Commission their cash management agreements. At that time, the Commission obtained OMB clearance for this new reporting requirement under the FERC–555 information collection (OMB Control No. 1902–0098). Now, the Commission includes these reporting requirements for cash management agreements under the FERC–604 information collection (OMB Control No. 1902–0267). The Commission implemented these reporting requirements in 18 CFR parts 141.500, 260.400, and 357.5.

Type of Respondent: Public utilities, natural gas companies, and oil pipeline companies.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–604—CASH MANAGEMENT AGREEMENTS

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response[2]	Total annual burden hours & total annual cost	Cost per respondent ($)
(1)	(2)	(1)*(2) = (3)	(4)	(3)*(4) = (5)	(5) ÷ (1)
25	1	25	1.5 hrs.; $111.75	37.5 hrs.; $2,793.75	111.75

FERC–923, Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators

OMB Control No.: 1902–0265.

Abstract: In 2013, the Federal Energy Regulatory Commission (FERC or Commission) revised its regulations to provide explicit authority to interstate natural gas pipelines and public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to voluntarily share non-public, operational information with each other for the purpose of promoting reliable service and operational planning on either the pipeline's or public utility's system. This helps ensure the reliability of natural gas pipeline and public utility transmission service by permitting transmission operators to share the information with each other that they deem necessary to promote the reliability and integrity of their systems. FERC removed actual or perceived prohibitions to the information sharing and communications between industry entities. The communications of information are not and will not be submitted to FERC. Rather, the non-public information is shared voluntarily between industry entities. FERC does not prescribe the content, medium, format, or frequency for the information sharing and communications. Those decisions are made by the industry entities, depending on their needs and the situation.

---

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $74.50 per Hour = Average Cost per Response. The Commission staff believes that the industry's level and skill set is comparable to FERC's with an average hourly cost (wages plus benefits) of $74.50.

Type of Respondent: Natural gas pipelines and public utilities.

Estimate of Annual Burden: The Commission estimates the annual public reporting burden for the information collection as:

FERC–923—COMMUNICATION OF OPERATIONAL INFORMATION BETWEEN NATURAL GAS PIPELINES AND ELECTRIC TRANSMISSION OPERATORS

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Average burden & cost per response[3] (4)	Total annual burden hours & total annual cost (3)*(4) = (5)	Cost per respondent ($) (5) ÷ (1)
Public Utility Transmission Operator, communications.	[4] 164	12	1,968	0.5 hrs.; $37.25 ..	984 hrs.; $73,308	447
Interstate Natural Gas Pipelines, communications.	155	12	1,860	0.5 hrs.; $37.25 ..	930 hrs.; $69,285	447
Total	....	....	3,828	....	1,914 hrs.; $142,593	....

Dated: August 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19469 Filed 8–15–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14522–001]

FFP Project 132, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14522–001.

c. *Date Filed:* June 22, 2016.

d. *Submitted by:* Rye Development, LLC on behalf of FFP Project 132, LLC.

e. *Name of Project:* Allegheny Lock and Dam 7 Hydroelectric Project.

f. *Location:* At the existing Army Corps of Engineers' Allegheny Lock and Dam 7 on the Allegheny River in Armstrong County, Pennsylvania near the Borough of Kittanning. The project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Kellie Doherty, Rye Development, LLC, 745 Atlantic Avenue, 8th floor, Boston, MA 02111; () 846–0042, extension 100; email—*kellie@rydevelopment.com.*

i. *FERC Contact:* Nick Ettema at (202) 502–6565; or email at *nicholas.ettema@ferc.gov.*

j. FFP Project 132, LLC filed its request to use the Traditional Licensing Process on June 22, 2016. FFP Project 132, LLC provided public notice of its request on June 25, 2016 and June 27 through July 1, 2016. In a letter dated August 10, 2016, the Director of the Division of Hydropower Licensing approved FFP Project 132, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Pennsylvania State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating FFP Project 132, LLC as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. FFP Project 132, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

---

[3] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $74.50 per Hour = Average Cost per Response. The Commission staff believes that the industry's level and skill set is comparable to FERC's with an average hourly cost (wages plus benefits) of $74.50.

[4] The estimate for the number of respondents is based on the North American Electric Reliability Corporation (NERC) Compliance Registry as of July 29, 2016, minus the Transmission Operators within ERCOT.

Dated: August 10, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–19473 Filed 8–15–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0814; FRL–9950–39]

Draft Guidance for Pesticide Registrants on the Determination of Minor Use; Notice of Availability; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** on June 14, 2016, announcing the availability of a draft Pesticide Registration Notice (PR Notice) for review and comment. The PR Notice was entitled "Determination of Minor Use under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 2(ll)." In response to a request to extend the comment period, this document extends the comment period for 30 days, from August 15, 2016 to September 14, 2016. This is one of the busiest times of year for pest control experts and this will allow them extra time to complete their review and comment on the PR Notice.

DATES: Comments must be received by September 14, 2016.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** documents of June 14, 2016 (81 FR 38704) (FRL 9946–13).

FOR FURTHER INFORMATION CONTACT: Derek Berwald, Biological and Economic Analysis Division, MC 7503P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8115; email address: *berwald.derek@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** document of June 14, 2016 (81 FR 38704) (FRL 9946–13) that announced the availability of a draft PR Notice entitled "Determination of Minor Use under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 2(ll)." EPA is hereby extending the comment period, which was set to end on August 15, 2016, to September 14, 2016.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of June 14, 2016 (81 FR 38704) (FRL 9946–13). If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 10, 2016.

Wynne F. Miller,

Acting Director, Biological and Economic Analysis Division, Office of Pesticide Programs.

[FR Doc. 2016–19554 Filed 8–15–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0599]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before September 15, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0599.

Title: Section 90.187, Trunking in the Bands Between 150–512 MHz; and Sections 90.425 and 90.647, Station Identification.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 4,757 respondents and 4,757 responses.

Estimated Time per Response: 0.25–3 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in *47 U.S.C. 154(i), 309(j)* and *332,* as amended.

Total Annual Burden: 5,242 hours.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information contained in this collection sets forth frequency coordination requirements under Section 90.187, and station identification requirements under Section 90.647 and 90.425. The information requested in this collection is used by the Commission staff to enable the FCC to evaluate the accuracy of frequency coordination pursuant to its rule under *47 CFR 90.187, 90.425* and *90.647.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–19502 Filed 8–15–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10084 First Piedmont Bank, Winder, Georgia

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10084 First Piedmont Bank, Winder, Georgia (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of First Piedmont Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective August 01, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: August 10, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–19420 Filed 8–15–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 31, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *J.T. Compton SBI Trust, James T. Compton, Mountain View, Arkansas, as trustee, the James Kent Compton SBI Trust, James Kent Compton, Conway, Arkansas, as trustee, the Charles Kevin Compton SBI Trust, Charles Kevin Compton, Little Rock, Arkansas, as trustee;* and the Kris David Compton SBI Trust, Kris David Compton and Debra Lynn Walters Compton, both of Hendersonville, North Carolina, as co-trustees, all as general and limited partners of the Compton Stone Quarry Family Limited Partnership, LLLP, Morrilton, Arkansas and as members of a family control group. The control group also includes the J.T. Compton GST Exempt Trust, James T. Compton as trustee, James T. Compton, individually, Lauren A. Compton, the Niva Compton Lancaster GST Exempt Trust, and the Niva Lancaster Revocable Living Trust, Niva C. Lancaster, Springfield, Missouri, as trustees; the Daniels Family Trust Dated 7/12/2006, Charles Daniels and Sonya Daniels, both of Navarre, Florida, as co-trustees; the Douglas Lancaster Trust, Sonya Daniels as trustee; and the Kevin Compton Revocable Trust, Charles K. Compton as trustee, to acquire and retain ownership of the voting shares of Stone Bancshares, Inc., Mountain View, Arkansas.

Board of Governors of the Federal Reserve System, August 11, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–19477 Filed 8–15–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 12, 2016.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Oakwood Bancshares, Inc., Plano, Texas,* to become a bank holding company by acquiring 100 percent of Oakwood State Bank, Oakwood, Texas.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *American Heritage Holding Company, Saint Cloud, Minnesota,* to acquire 100 percent of Avon Bancshares, Inc., and thereby indirectly

acquire Avon State Bank, both of Avon, Minnesota.

C. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First Midwest Bancorp, Inc., Itasca, Illinois,* to merge with Standard Bancshares, Inc., Hickory Hills, Illinois, and thereby indirectly acquire Standard Bank and Trust Company, Hickory Hills, Illinois.

Board of Governors of the Federal Reserve System, August 11, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–19478 Filed 8–15–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Board Member Meeting

TIME AND DATE: 10:00 a.m. (Eastern Time) August 22, 2016 (Telephonic).

PLACE: 10th Floor Board Meeting Room, 77 K Street NE., Washington, DC 20002.

STATUS: Parts will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open to the Public

1. Approval of the Minutes for the July 25, 2016 Board Member Meeting
2. Monthly Reports
   (a) Participant Activity Report
   (b) Investment Performance Report
3. Quarterly Reports
   (c) Metrics
   (d) Project Activity
4. Calendar Review: 2016–2017 Board Member Meetings

Closed to the Public

5. Security
6. Procurement

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: August 12, 2016.

Laurissa Stokes,

Assistant General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2016–19617 Filed 8–12–16; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-16-16AR; Docket No. CDC–2016–0073]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the CDC Undergraduate Scholars Program (CUPS), James A. Ferguson Infectious Diseases Graduate Fellowship (Ferguson) and Student Coordinating Center (SCC) Program Evaluation. Data will be collected for the purpose of evaluating the progress of programmatic activities.

DATES: Written comments must be received on or before October 17, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0073 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: All public comment should be submitted through the Federal eRulemaking portal *(regulations.gov)* or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

CDC CUPS, Ferguson Fellowship, and Student Coordinating Center Program Evaluation—Existing Collection in Use Without OMB Control Number—Office of Minority Health and Health Equity

(OMHHE), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) works to protect America from health, safety and security threats, both foreign and in the United States. As America continues to evolve into a more diverse society, and as CDC strives to fulfill this mission, it contends with the reality that racial and ethnic minority populations assume a much higher burden of morbidity and mortality than the majority of Americans. Particularly challenging for public health is that as the growth of these underrepresented racial-ethnic groups in the United States population increases, the percentage of underrepresented groups working in public health remains stagnant or continues to decline. Research has shown that physicians of underrepresented populations are more likely to provide services in underserved communities; often providing care at much greater frequency than their white counterparts. Therefore, a major part of achieving CDC's mission is to encourage greater numbers of underrepresented students to pursue a career in public health.

The CDC's Undergraduate Scholars Program (CUPS) and the Dr. James A. Ferguson Emerging Infectious Diseases Fellowship (Ferguson) are educational pipeline programs that seek to increase the pool of qualified, underrepresented professionals in the public health workforce by providing students with experiential knowledge and academic learning. The Student Coordinating Center is the operational support arm of CUPS and Ferguson, providing technical support to the grantees and student follow up efforts. The common mission of CUPS and Ferguson is to encourage students, early in their college and graduate educations, to choose a career in public health (federal, state, local, territorial health agencies or non-governmental agencies), public health research, and to contribute to the public health workforce.

Through a highly competitive selection process, each year a new cohort of up to 150 students is chosen. So far, over 900 participants have been recruited and completed the CUPS program. Each year six to eight students are selected to participate in the Ferguson Program. To date, more than 460 students have participated in the Ferguson Fellowship Program. Racial/Ethnic minorities and other underrepresented students comprise the majority (>90%) of those recruited to both programs. All selected participants receive a full day orientation at CDC, where they are introduced to the Centers' leadership, attend symposia; participate in a series of group discussions; and take part in information exchanges. During the CDC orientation, students are also introduced to CDC's priorities, current public health initiatives, and emerging public health issues at the federal level.

After the initial CDC orientation, students are assigned to a variety of public health practice and research settings across the nation, where they are paired with public health mentors who provide the interns a guided experience of public health through instruction that emphasizes skill areas identified as Core Competencies for public health professionals. In addition to mentorship and didactic learning, students also receive real world work experience that provides foundational knowledge for a career in public health.

There are nine data collection instruments administered by the four grantees: Summer Public Health Scholars Program; James A. Ferguson Program; Maternal and Child Health Careers/Research Initiatives for Student Enhancement; Public Health Leadership and Learning Undergraduate Student Success (PLUSS); Project Imhotep; SCC Follow-up Survey (6 months); SCC Follow-up Survey (12 months); SCC Follow-up Survey (24 months); Future Public Health Leaders Program.

The maximum estimated, annualized time burden is 6,081 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Student Participants, Columbia University.	Summer Public Health Scholars Program (SPHSP).	1,600	1	90/60	2,400
Student Participants, Kennedy Krieger Institute, Ferguson Infectious Disease Fellowship Program.	James A. Ferguson Program	310	1	90/60	465
Student Participants, MCH	Maternal and Child Health Careers/Research Initiatives for Student Enhancement.	900	1	90/60	1,350
Student Participants, PPLUSS	Public Health Leadership and Learning Undergraduate Student Success (PPLUSS).	224	1	90/60	336
Student Participants, IMHOTEP	Project IMHOTEP	330	1	90/60	495
Former CUPS students	SCC Follow-up Survey (6 months)	150	1	30/60	75
Former CUPS students	SCC Follow-up Survey (12 months)	150	1	30/60	75
Former CUPS students	SCC Follow-up Survey (24 months)	150	1	30/60	75
Student Participants, University of Michigan.	Future Public Health Leaders Program.	540	1	90/60	810
Total					6,081

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–19460 Filed 8–15–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2016–0083; 60Day–16–16AWM]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice with comment period.

SUMMARY: Centers for Disease Control and Prevention as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on this proposed information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the Executive and Scientific Resources Office Access Management System (EAMTS). EAMTS is designed to house all Guest Researcher & ORISE program packets, Appointment Mechanism Determination Forms, and Title 42 Fellowship Immigration information in one central location on the Human Resources Office SharePoint Server.

DATES: Written comments must be received on or before October 17, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2016–0083 by any of the following methods: Federal eRulemaking Portal: *Regulations.gov*. Follow the instructions for submitting comments.

Mail: Jeffrey M. Zirger, Acting Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Data Management for Executive and Scientific Resources Access Management Tracking System—New—Executive and Scientific Resource Office (ESRO), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

ESRO seeks to submit and information collection request for approval of information collections through its ESRO Access Management Tracking System (EAMTS). This system will automate current manual processes for programs managed by ESRO. This new process will provide users a single, integrated location to allow for collaboration, faster processing between the programs and ESRO and a better onboarding experience for potential fellows.

EAMTS will support users by providing a single, integrated location for enterprise content management, manage documents and records by using workflows an information rights management. This business process will allow ESRO to design forms that are accessible in SharePoint through a Web Browser. Team members will be able to access critical business information, analyze and view data, and publish reports to make more informed decisions.

EAMTS will allow CIO's to submit digital packets including Guest Researcher, ORISE, Title 42 Fellowship Visa request (portion of CDC 0.1475) and Appointment Mechanism Determination Request Form (CDC 0.4601). CIO's can upload supplemental documentation as an attachment to each application, electronically track and monitor status of application, digitally sign forms and requests, receive case determinations quickly and accurately, and track the Visa status of Title 42 Fellowship requests that require Visa assistance from the Human Resources Office.

EAMTS is developed in SharePoint for CDC's Centers/Institutes/Offices (CIO) to submit required information for all of Executive and Scientific Resource Office's managed programs and for these CIO's to effectively and efficiently digitally review this information. Data is managed and maintained by appropriate CIO Staff with ground and form level permission.

Permissions to EAMTS are required to access the lists, forms, and document library. This includes entering data, clearing/approving forms, processing forms, and acknowledging data entered.

The total estimated annualized burden hours for all respondents are 1,280. There are no costs to respondents other than their time. CDC will seek a three-year approval from OMB.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per CIO	Average burden per response (in hours)	Total burden (in hours)
Initiator/C/I/O	CDC 0.4601	64	5	1	320
Initiator/C/I/O	CDC 0.410A	64	5	1	320
Initiator/C/I/O	CDC 0.410B	64	5	1	320
Initiator/C/I/O	Section C of the CDC 0.1475	64	5	1	320
Totals					1,280

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–19461 Filed 8–15–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01).

Date: September 22, 2016.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3F100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G42A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5069, *lrust@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 10, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19417 Filed 8–15–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Exclusive Evaluation Option License Agreement: Small Molecule Therapeutic Compounds Encompassed Within the Licensed Patent Rights for the Treatment of Thioesterase Deficiency Disorder

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a Start-Up Exclusive Evaluation Option License Agreement to practice the inventions embodied in the following Patent Applications to Circumvent Pharmaceuticals Inc. ("Circumvent") located in Pasadena, California, USA:

Intellectual Property

United States Provisional Patent Application No. 61/473,692, filed April 8, 2011, titled "Small molecule therapeutic compounds targeting thioesterase deficiency disorders and methods of using the same" [HHS Reference No. E–157–2011/0–US–01], status: Expired;

International Patent Application No. PCT/US2012/32772 filed April 9, 2012 titled "Small molecule therapeutic compounds targeting thioesterase deficiency disorders and methods of using the same" [HHS Reference No. E–157–2011/0–PCT–02], status: Converted;

European Patent Application No. 12716889.6, filed November 7, 2013, titled "Small molecule therapeutic compounds targeting thioesterase deficiency disorders and methods of using the same" [HHS Reference No. E–157–2011/0–EP–03], status: Pending; and

United States Patent Application No. 14/110,393, filed October 7, 2013, titled "Small molecule therapeutic compounds targeting thioesterase deficiency disorders and methods of using the same" [HHS Reference No. E–157–2011/0–US–04], status: Pending.

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The territory of the prospective Start-Up Exclusive Evaluation Option License Agreement may be worldwide and the field of use may be limited to: "Small molecule therapeutic compounds encompassed within the Licensed Patent Rights for the treatment of thioesterase deficiency disorders"

Upon the expiration or termination of the Start-up Exclusive Evaluation Option License Agreement, Circumvent will have the exclusive right to execute a Start-Up Exclusive Patent License Agreement which will supersede and replace the Start-up Exclusive Evaluation Option License Agreement, with no greater field of use and territory than granted in the Start-up Exclusive Evaluation Option License Agreement.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of

Technology Transfer on or before August 31, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated Start-Up Exclusive Evaluation Option License Agreement should be directed to: Surekha Vathyam, Ph.D., Senior Licensing and Patenting Manager, National Cancer Institute Technology Transfer Center, 9609 Medical Center Drive, Rm 1E–530 MSC9702, Rockville, MD 20850–9702, Email: *vathyams@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The subject technology describes methods of using derivative compositions of hydroxylamine, including N-t-butyl hydroxylamine (NtBuHA), for the treatment of thioesterase deficiencies. NtBuHA is small molecule derivative of hydroxylamine which possesses strong anti-oxidant properties and an ability to cleave thioester linkages with high specificity. These capabilities suggest that NtBuHA may be useful as a modulator of intracellular protein palmitoylation dynamics when endogenous mechanisms are insufficient to support normal function.

The compounds disclosed in this invention have potential therapeutic applications for both the management of diseases driven by excess accumulation or malfunction of palmitoylated proteins. Target disorders may therefore include neuronal ceroid lipofuscinoses (also known as Batten Disease), amyotrophic lateral sclerosis, and Ras-driven cancers.

The prospective Start-Up Exclusive Evaluation Option License Agreement is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective Start-Up Exclusive Evaluation Option License Agreement may be granted unless the NIH receives written evidence and argument that establishes that the grant of the contemplated Start-Up Exclusive Evaluation Option License Agreement would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7 within fifteen (15) days from the date of this published notice.

Complete applications for a license in an appropriate field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Start-Up Exclusive Evaluation Option License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 8, 2016.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–19418 Filed 8–15–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Integrating Biospecimen Science Approaches into Clinical Assay Development.

Date: September 8, 2016.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W108, Rockville, MD 20892–9750, 240–276–6343, *schweinfestcw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project I SEP–1.

Date: September 29–30, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W122, Rockville, MD 20892–9750, 240–276–6349, *ahmads@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Barrett's Esophagus Translational Research Network Review.

Date: October 20, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Wlodek Lopaczynski, MD, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20892–9750, 240–276–6458, *lopacw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; PAR 15–266 Imaging.

Date: October 24, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 6W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Omnibus R03 SEP–3.

Date: November 3, 2016.

Time: 8:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Byeong-Chel C. Lee, Ph.D., Scientific Review Officer, Review Training and Resources Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W238, Rockville, MD 20892–9750, 240–276–6260, *byeong-chel.lee@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Pancreatic Cancer Detection Consortium (U01).

Date: November 9, 2016.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W032, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W120, Rockville, MD 20892–9750, 240–276–6457, *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Biospecimen Science.

Date: December 9, 2016.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W260, Rockville, MD 20892–9750, 240–276–5856, *nadeem.khan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 10, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19416 Filed 8–15–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702, Tel. 240–276–5515 or Email *ncitechtransfer@mail.nih.gov.* A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention: Human Monoclonal Antibodies Targeting Glypican-2 in Neuroblastoma.

Keywords: Glypican-2, GPC2, Antibody, Immunotoxin, Recombinant Immunotoxin, RIT, Chimeric Antigen Receptor, CAR, Antibody-drug Conjugate, ADC, bispecific antibody, neuroblastoma.

Description of Technology: Neuroblastoma is a rare pediatric cancer that affects one in every hundred thousand children under the age of fifteen in the United States. Current standards of care are chemotherapy and surgery, followed by stem-cell treatments, radiation and anti-ganglioside antibody therapy, which yield an average three-year survival rate of 10–45%. This demonstrates a need for more effective therapies.

Glypican-2 (GPC2) is a cell surface protein that has been shown to be preferentially expressed on numerous pediatric cancers, including neuroblastoma. Due to this preferential expression, GPC2 represents a potential candidate for targeted therapy. Researchers at the National Cancer Institute's Laboratory of Molecular Biology (NCI LMB) have developed and isolated several single domain monoclonal human antibodies against GPC2. This technology covers the naked GPC2 antibodies as well as their use as targeting domains in recombinant immunotoxins (RITs) and chimeric antigen receptors (CARs). RITs (using clones LH1, LH4, or LH7) and CARs (using LH7) have shown specific killing activity against GPC2-expressing cells, suggesting that these candidates may be further developed as therapeutics.

The technology has been validated with *in-vitro* studies (human anti-GPC2 RITs and CARs can bind to, and kill, GPC2-positive tumor cells) and the researchers are currently developing mouse models to further develop GPC2-targeted therapies.

Potential Commercial Applications:

—Therapeutic applications include: Unconjugated antibodies, and use as targeting moieties for immunoconjugates such as CARs, ADCs, immunotoxins, and bispecific antibodies

—Diagnostic agent for detecting and monitoring target-expressing malignancies

Value Proposition:

—First to market potential—No current clinical trials with GPC2-targeted therapies

—Human antibody with high specificity and binding to targets results in less non-specific cell killing, therefore fewer potential side-effects for the patient

—Small size of single domain antibodies enhances stability, solubility, and target recognition

Development Stage: In-vitro.

Inventor(s): Mitchell Ho (NCI), *et al.*

Intellectual Property: US Provisional Application 62/369,861 (HHS Reference No. E–211–2016/0–US–01) filed August 2, 2016, entitled "Human Monoclonal Antibodies Targeting Glypican-2 in Neuroblastoma."

Collaboration Opportunity: Researchers at the NCI seek parties interested in licensing or co-developing GPC2 antibodies and/or conjugates.

Contact Information: Requests for copies of the patent application or inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email: *john.hewes@nih.gov.*

Dated: August 8, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–19419 Filed 8–15–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) on August 24, 2016.

The meeting will include discussions on child welfare and substance use disorders among families; improving the health of women and girls; recovery-oriented systems of care and what they mean for women; accountable health communities and how they relate to behavioral health; and a conversation with the SAMHSA Deputy of Operations and the Chief of Staff.

The meeting is open to the public and will be held at SAMHSA, 5600 Fishers Lane, Rockville, MD 20857, in Conference Room 5N76. Attendance by the public will be limited to space available. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person (below) on or before August 19, 2016. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact person on or before August 19, 2016. Five minutes will be allotted for each presentation.

The meeting may be accesed via telephone. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with SAMHSA's Designated Federal Officer, Ms. Nadine Benton (see contact information below).

Substantive meeting information and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site *http://www.samhsa.gov/about-us/advisory-councils/advisory-committee-womens-services-acws* or by contacting Ms. Benton.

Committee Name: Substance Abuse and Mental Health Services Administration Advisory Committee for Women's Services (ACWS).

Date/Time/Type: Wednesday, August 24, 2016, from: 9:00 a.m. to 5:00 p.m. EDT, open.

Place: SAMHSA, 5600 Fishers Lane, Conference Room 5N76, Rockville, Maryland 20857.

Contact: Nadine Benton, Designated Federal Official, SAMHSA's Advisory Committee for Women's Services, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (240) 276–0127, Fax: (240) 276–2252, Email: *nadine.benton@samhsa.hhs.gov.*

Summer King,

Statistician, Substance Abuse and Mental Health, Services Administration.

[FR Doc. 2016–19422 Filed 8–15–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0437]

Update to Alternative Planning Criteria (APC) National Guidelines

AGENCY: Coast Guard, DHS.

ACTION: Extension of comment period and notice of public meeting.

SUMMARY: Representatives from the U.S. Coast Guard's Office of Marine Environmental Response Policy and Seventeenth District will meet on September 21, 2016, in Anchorage, Alaska. The meeting will be used as an opportunity to discuss Alternative Planning Criteria (APC) as they relate to oil spill preparedness pursuant to vessel response plan requirements. The meeting will be open to the public. In addition, the comment period for the notice published May 27, 2016, is extended.

DATES: The comment period for the notice published May 27, 2016 (81 FR 33685) is extended. Comments and related material must be submitted on or before Friday, September 23, 2016. The Coast Guard will meet Wednesday, September 21, 2016, from 8:30 a.m. to 3:00 p.m. Please note that the meeting may close early if all comments have been heard.

ADDRESSES: The meeting will be held in the Robert Atwood Room (Room 104) on the first floor of the Robert B. Atwood Building, 550 W. 7th Avenue, Anchorage, AK 99501. Parking will be available in the adjacent Lilly Pacillo Parking Garage. Parking tickets can be validated at the Atwood Building's Security Desk.

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below, as soon as possible.

To view the APC Guidelines, as well as public comments and any documents mentioned in this notice, go to *http://www.regulations.gov* and type "USCG–2016–0437," and click "Search." Then click "Open Docket Folder."

FOR FURTHER INFORMATION CONTACT: CDR Scott Stoermer, USCG Headquarters, 2703 Martin Luther King Jr. Ave SE., Stop 7516, Washington, DC 20593, *scott.a.stoermer@uscg.mil,* (202) 372–2234.

SUPPLEMENTARY INFORMATION: This public meeting is part of the public comment period already announced regarding the draft National APC Policy (81 FR 33685). To facilitate public participation, we are extending the comment period and holding a public meeting, and we invite public comment on the issues as listed in the "Agenda" section below. Comments previously submitted do not need to be submitted again.

Submitting Written Comments

If you submit a written comment, please include the docket number, indicate the specific material to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Public Meeting

A public comment period will be held during the meeting on September 21, 2016, from 12:00 p.m. to 3:00 p.m. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to pre-register as a speaker. Pre-registration is not required to speak at the meeting as attendees will be able to note their desire to speak via the on-site meeting attendance/registration form. Written comments may also be brought to the meeting and will be included as part of the docket. Written comments submitted to the docket via *http://www.regulations.gov* do not need to be brought to the meeting.

The U.S. Coast Guard Office of Marine Environmental Response Policy is developing national-level policy to clarify APC submissions and processes pursuant to Title 33 Code of Federal Regulations, Part 155.1065 and 155.5067. While not a regulatory or rule-making activity, the Coast Guard is aware of the impact of the policy related to APC and its critical role in tank and non-tank vessel response preparedness. The goals of this public meeting are to: (1) Inform public entities of the status of Alternative Planning Criteria policy; (2) Inform public entities of the comments from earlier comment period(s); (3)

Ensure public understanding of the Coast Guard's view of APC; and (4) Seek public comment & public insight into current APC policy challenges.

Agenda

The Coast Guard will present information pertaining to APC and receive oral comments from the public. Written comments will be accepted at the meeting; however, it is preferred any written comments are submitted in advance of the meeting. The Coast Guard will present the following topics:

(1) Brief, high-level summary of comments received following the release of District Seventeen's Draft Marine Safety Information Bulletin (July 2015) and during the comment period to date.

(2) Tenets of the draft APC policy.

(3) Open floor to receive public comments.

The Coast Guard will review all of the information received from public comment and take both oral and written comments into consideration as it finalizes the development of national APC policy.

Dated: August 10, 2016.

Joseph B. Loring,

Captain, Office of Marine Environmental Response Policy.

[FR Doc. 2016–19512 Filed 8–15–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2003–14610]

Intent To Request Revision From OMB of One Current Public Collection of Information: Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0027, abstracted below that we will submit to OMB for revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves applicant submission of biometric and biographic information for TSA's security threat assessment in order to obtain the hazardous materials endorsement (HME) on a commercial drivers license (CDL) issued by states and the District of Columbia.

DATES: Send your comments by October 17, 2016.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is inviting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0027; Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Driver's License, 49 CFR part 1572. TSA is requesting a revision of the currently approved ICR. The currently approved ICR supports implementation of section 1012 of the USA PATRIOT Act (Pub. L. 107–56, 115 Stat. 272, 396, Oct. 26, 2001) (49 U.S.C. 5103a), which mandates that no state or the District of Columbia may issue a HME on a CDL unless TSA has first determined that the driver is not a threat to transportation security.

TSA's implementing regulations (codified at 49 CFR part 1572) describe the procedures, standards, and eligibility criteria for security threat assessments on individuals seeking to obtain, renew, or transfer a HME on a CDL. In order to conduct the security threat assessment, states (or TSA's agent in states electing to have TSA perform the collection of information) must collect the driver's legal name, current and previous mailing addresses, date of birth, gender, height, weight, hair and eye color, city/state/country of birth, social security number (optional) and immigration status/naturalization date/alien registration number (as applicable).

In addition, states or the TSA agent must submit the driver's acknowledgement concerning previous criminal history, the driver's fingerprints, and whether the driver is a new applicant or applying to renew or transfer the HME. This information is necessary for TSA to forecast driver retention, transfer rate, and drop-rate to help improve customer service, reduce program costs, and provide comparability with other Federal background checks, including the Transportation Workers Identification Credential (TWIC). Finally, states are required to maintain a copy of the driver application for a period of one year.

The currently approved ICR also includes an optional survey to gather information regarding the drivers' overall customer satisfaction with the service received at the enrollment center utilized by the TSA agent states. The optional survey will be administered at the end of the in-person enrollment service. Please note that the optional survey is only provided for drivers who enroll with a state serviced by TSA's designated enrollment contractor.

TSA is revising the collection of information to expand the potential use of information. This revision would allow future use of the information collected for additional comparability determinations, such as allowing the HME applicant to participate in a program such as the TSA Pre✓® Application Program without requiring an additional background check. For example, the HME applicant may be able to "opt in" for a determination that the HME holder is eligible to participate in TSA Pre✓®, TSA's expedited screening program for air travelers. TSA does not foresee additional fees for completing the comparability determination.

TSA estimates an annualized 267,157 respondents[1] will apply for an HME, and that the application and background check process will involve 440,275 annualized hours.[2] TSA estimates that of the 267,157 respondents, 93,505 drivers will respond to the survey with an annualized burden hours of 3,927. TSA estimates the total annualized costs to respondent drivers will be $23,497,498.

Dated: August 10, 2016.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2016–19448 Filed 8–15–16; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–N–18]

60-Day Notice of Proposed Information Collection: Monthly Report of Excess Income and Annual Report of Uses of Excess Income

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 17, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Harry Messner, Project Manager, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–2626 (this is not a toll free number) for copies of the proposed forms and other available information. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Monthly Report of Excess Income and Annual Report of Uses of Excess Income.

OMB Approval Number: 2502–0086.

Type of Request: Extension request of currently approved collection.

Form Number: Web form e-93104 Monthly Report of Excess Income.

Description of the need for the information and proposed use: Project owners are permitted to retain Excess Income for projects under terms and conditions established by HUD. Owners must submit a written request to retain some or all of their Excess Income. The request must be submitted at least 90 days before the beginning of each fiscal year, or 90 days before any other time during a fiscal year that the owner plans to begin retaining excess income for that fiscal year. HUD uses the information to ensure that required excess rents are remitted to the Department and/or retained by the owner for project use.

Respondents (*i.e.* affected public): Multifamily Project Owners.

Estimated Number of Respondents: 834.

Estimated Number of Responses: 19,361.

Frequency of Response: Monthly.

Average Hours per Response: Three-quarters of an hour.

Total Estimated Burden: 5,585.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 9, 2016.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2016–19506 Filed 8–15–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5932–N–05]

Agenda and Notice of Public Meetings of the Moving To Work Research Advisory Committee

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of a federal advisory committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a two-day meeting of the Moving To Work (MTW) Research Advisory Committee (Committee). The Committee meeting will be held on Thursday and Friday, September 1 and 2, 2016. The meeting is open to the public and is accessible to individuals with disabilities.

DATES: The in-person meeting will be held on Thursday, September 1, 2016 from 9:00 a.m. to 5:30 p.m. Eastern Daylight Time (EDT) and Friday, September 2, 2016 from 8:00 a.m. to 4:00 p.m. (EDT) at HUD Headquarters, 451 7th Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Laurel Davis, Department of Housing and Urban Development, Office of

---

[1] The number of respondents is based on actual numbers from 2014, 2015, the estimate for 2016, and a 1 percent growth estimate for 2017–19.

[2] The hour burden was recalculated using zip code average transit, average enrollment time, and a "wait time" buffer of 10 minutes. The total hour burden was reduced by about 1.5 hours, which accounts for the reduction of the annualized hours since the last submission to OMB in 2013.

Public and Indian Housing, 451 7th Street SW., Room 4116, Washington, DC 20410, telephone (202) 402–5759 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339 or can email: *MTWAdvisoryCommittee@hud.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2). The Moving To Work (MTW) Research Advisory Committee (Committee) was established on May 2, 2016, to advise HUD on specific policy proposals and methods of research and evaluation related to the expansion of the MTW demonstration to an additional 100 high-performing Public Housing Authorities (PHAs). See 81 FR 244630. On July 26 and 28, 2016 HUD convened two conference call meetings of the Committee. The minutes of these meetings are available on the HUD Web site at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion.*

HUD is now convening a two-day meeting to discuss the framework and associated research methodologies for potential policies that HUD may require new MTW PHAs to test as a condition of admittance to the program. HUD will convene the first day of the meeting on Thursday, September 1, 2016, from 9:00 a.m. to 5:30 p.m. (EDT). The second day of the Committee's meeting will convene on Friday, September 2, 2016, from 8:00 a.m. to 4:00 p.m. (EDT). The agenda for the two-day meeting is as follows:

Thursday, September 1, 2016 from 9:00 a.m. to 5:30 p.m. EDT

I. Welcome and Introductions
II. Review of Agenda
III. Recap of July 2016 Conference Calls
IV. Goals for the September 1st and 2nd Meeting
  a. Review and refine "Guiding Principles" for research methodology discussion
  b. Discuss framework and possible research methodologies for each policy
  c. Obtain recommendations for the initial cohort
V. Overview of Evaluation Responsibilities
VI. Public Comment
VII. BREAK
VIII. Policy Framework and Research Methodologies—MTW Statutory Objective #1: Reduce Cost and Achieve Greater Cost-Effectiveness in Federal Expenditures
  a. Simplification of the Rent Calculation
IX. BREAK FOR LUNCH
X. Policy Framework and Research Methodologies—MTW Statutory Objective #1: Reduce Cost and Achieve Greater Cost-Effectiveness in Federal Expenditures (continued)
  a. Studying Fungibility through the MTW Block Grant
  b. Regionalization, as per the FY 2016 Appropriations Act
XI. BREAK
XII. Policy Framework and Research Methodologies—MTW Statutory Objective #1: Reduce Cost and Achieve Greater Cost-Effectiveness in Federal Expenditures (continued)
  a. Other Topics
  b. Public Comment
XIII. Policy Framework and Research Methodologies—MTW Statutory Objective #2: Give Incentives to Families with Children Whose Heads of Household are Either Working, Seeking Work, or Participating in Job Training, Educational, or Other Programs that Assist in Obtaining Employment and Becoming Economically Self-Sufficient
  a. Rent Reform, in combination with work requirements, time limits, and supportive services
  b. Work Requirements and/or time limits, without rent reform
XIV. Wrap-Up and Adjourn

Friday, September 2, 2016 from 8:00 a.m. to 4:00 p.m. EDT

I. Welcome and Introductions
II. Recap of Day 1 Discussion
III. Policy Framework and Research Methodologies—MTW Statutory Objective #2: Give Incentives to Families with Children Whose Heads of Household are Either Working, Seeking Work, or Participating in Job Training, Educational, or Other Programs that Assist in Obtaining Employment and Becoming Economically Self-Sufficient (continued)
  a. Strategies for the reintegration of individuals to their family or household
  b. Other Topics
  c. Public Comment
IV. BREAK
V. Policy Framework and Research Methodologies—MTW Statutory Objective #3: Increasing Housing Choice
  a. Local Project-Based Voucher Programs
  b. Sponsor-Based Housing
VI. BREAK FOR LUNCH
VII. Policy Framework and Research Methodologies—MTW Statutory Objective #3: Increasing Housing Choice (continued)
  a. Landlord Incentive Programs
  b. Other Topics
VIII. BREAK
IX. Public Comment
X. Recap of Day 2 Discussion
XI. Priorities for the 1st Cohort
XII. Wrap-Up, Next Steps and Adjourn

With advance registration, the public is invited to attend both days of the meeting in-person or by phone. To register to attend either in-person or by phone, please visit the MTW Demonstration's expansion Web page at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion.*

If attending the meeting in-person, details about the meeting location and how to access the building will be provided after completing the pre-registration process at the above link.

Registered members of the public can call-in to both days of the meeting by using the following toll-free number in the United States: (800) 230–1766, or the following International number for those outside the United States: (612) 288–0329. Please be advised that the operator will ask callers to provide their names and their organizational affiliations (if any) prior to placing callers into the conference line to ensure they are part of the pre-registration list. Callers can expect to incur charges for calls they initiate over wireless lines and for international calls, and HUD will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number. Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS): (800) 977–8339 and providing the FRS operator with the conference call toll-free number: (800) 230–1766.

Also, with advance registration, members of the public will have an opportunity to provide feedback during the meeting. The total amount of time for such feedback will be limited to ensure pertinent Committee business is completed. If the number of registered commenters for any comment session listed on the agenda exceeds the available time, HUD will initiate a lottery to select commenters. In order to pre-register to provide comments during one or more of the public comment sessions on the meeting agenda, please visit the MTW Demonstration's expansion Web page at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion.*

Records and documents discussed during the meeting, as well as other information about the work of this Committee, will be available for public viewing as they become available at: *http://www.facadatabase.gov/committee/committee.aspx?t=c&cid=2570&aid=77* by clicking on the "Committee Meetings" link. These materials will also be available on the MTW Demonstration's expansion Web page at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion.* Records generated from this meeting may also be inspected and reproduced at the Department of Housing and Urban Development Headquarters in Washington, DC, as they become available, both before and after the meeting.

Outside of the work of this Committee, information about HUD's broader implementation of the MTW expansion, as well as additional opportunities for public input, can be found on the MTW Demonstration's expansion Web page at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/mtw/expansion.*

Questions concerning this notice should be directed to Laurel Davis, DFO, Office of Public and Indian Housing, Department of Housing and Urban Development at *MTWAdvisoryCommittee@hud.gov.*

Dated: August 10, 2016.

Lourdes Castro Ramírez,

Principal Deputy Assistant Secretary for Public and Indian Housing.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2016–19513 Filed 8–15–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–58]

30-Day Notice of Proposed Information Collection: The Multifamily Project Application and Construction Prior to Initial Endorsement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 15, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 1, 2016.

A. Overview of Information Collection

Title of Information Collection: The Multifamily Project Application and Construction Prior to Initial Endorsement.

OMB Approval Number: 2502–0029.

Type of Request: Revision.

Form Number: HUD–92013, HUD–92013 Supp, HUD–92013–A, HUD–92013–B, HUD–92013–C, HUD–92013–D, HUD–92013–E, 92264, HUD–92264–A, HUD–92273, HUD–92274, HUD–92326, HUD–92329, HUD–92331,HUD–92485, HUD–92415, HUD–92447, HUD–92452, HUD–92010, HUD–91708, HUD–2880, HUD–92466–R1, R2, R3, R4, HUD–92466 R5, HUD–92408, HUD–92466M, FM–1006, HUD–95379 and HUD–2.

Description of the need for the information and proposed use: The Multifamily Project Applications and Construction Prior to Initial Endorsement is being revised to include two (2) supplemental forms that outline requirements of owners that elect to benefit from the simplified rate categories. These forms will be used during the processing of an application for a FHA insured mortgage to determine the appropriate mortgage insurance premium.

Respondents (i.e., affected public): 1,002.

Estimated Number of Respondents: 1,002.

Estimated Number of Responses: 229.

Frequency of Response: 1.

Average Hours per Response: 34,112.

Total Estimated Burden: 351,182.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 9, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–19509 Filed 8–15–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–57]

30-Day Notice of Proposed Information Collection: ConnectHome Baseline Survey Data Collection

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 15, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5533. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on Friday, May 6, 2016 at 81 FR 27462.

A. Overview of Information Collection

Title of Information Collection: ConnectHome Baseline Survey Data Collection.

OMB Control Number: 2528–0308.

Form Number: Survey.

Type of Request: Reinstatement.

Description of the need for information and proposed use: The purpose of this effort is to support communities in the 28 ConnectHome sites in administering a baseline survey of targeted residents' current at-home Internet access. The survey administration will include the development of an outreach plan with HUD ConnectHome collaborators and communities; selection of a sample of participants to be surveyed; administration of an initial baseline internet access survey; and submission of a database, codebook, and frequency output tables for collected data; and submission of a summary analysis of the collected data.

The baseline survey will provide HUD with baseline measures of in-home high-speed internet access, barriers to access among those without access, and types of devices used to access the internet. Upon establishing baseline measures, HUD's ConnectHome team will use this information to support local efforts in closing the digital divide

Respondents (describe): The survey is expected to be administered by mail or by Public Housing Authority staff in person or by phone to targeted assisted households at 28 ConnectHome sites. Communities are targeting different populations, which the survey's sampling process will recognize that some communities are targeting only public housing households with children, while others are also targeting voucher holders or residents of HUD multifamily housing in addition or instead.

Estimated Number of Respondents: 2,800.

Estimated Number of Responses: 2,800.

Frequency of Response: One time.

Average Hours per Response: 5 minutes (.0833 hours).

Total Estimated Burdens: 233.24.

CONNECTHOME BASELINE SURVEY DATA COLLECTION

Submission requirements	Number respondents	Number responses	Total responses	Hours per response	Total hours	Cost per hour	Total cost
Baseline Survey	5600	2800	2800	.0833	233.24	$7.25	$1,690.99
Total Paperwork Burden	5600	2800	2800	.0833	233.24	7.25	1,690.99

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 9, 2016.

Inez C. Downs,

Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 2016–19511 Filed 8–15–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957000–16–L13100000–PP0000]

Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on the dates indicated.

FOR FURTHER INFORMATION CONTACT: WY957, Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management and U.S. Forest Service and are necessary for the management of resources. The lands surveyed are:

The plats and field notes representing the retracement of the Wyoming-South Dakota State Boundary between mile posts 65 and 69, the corrective dependent resurvey of certain sections, the dependent resurvey of portions of the subdivisional lines, and the survey of the subdivision of sections 9 and 10, Township 46 North, Range 60 West, Sixth Principal Meridian, Wyoming, Group No. 918, was accepted February 11, 2016.

The plat and field notes representing the dependent resurvey of portions of the subdivisional lines and the survey of the subdivision of sections 3, 4 and 8, Township 14 North, Range 88 West, Sixth Principal Meridian, Wyoming, Group No. 923, was accepted February 11, 2016.

The plat and field notes representing the dependent resurvey of portions of the east boundary, subdivisional lines, and subdivision of section 24, Township 21 North, Range 88 West, Sixth Principal Meridian, Wyoming, Group No. 922, was accepted March 16, 2016.

Copies of the preceding described plats and field notes are available to the public at a cost of $4.20 per plat and $.13 per page of field notes.

Dated: August 10, 2016.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2016–19482 Filed 8–15–16; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC01000 L16600000.XZ0000 16XL1109AF LXSIOVHD0000]

Call for Nominations for Central and Northern California Resource Advisory Councils and Carrizo Plain National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is seeking nominations for the Central California and Northern California District Resource Advisory Councils (RAC) and the Carrizo Plain National Monument Advisory Committee (MAC). The Central California RAC advises BLM officials for the Central Coast, Mother Lode, Bakersfield, Ukiah and Bishop Field Offices. The Northern California RAC advises BLM officials for the Redding, Arcata, Eagle Lake and Applegate Field Offices. The Carrizo MAC advises BLM officials for the Monument. The BLM will receive public nominations for 30 days from the date this notice is published.

DATES: A completed nomination form and accompanying nomination/recommendation letters must be received at the addresses listed below no later than September 15, 2016.

ADDRESSES: Completed applications for the Central California RAC and Carrizo MAC should be sent to the Bureau of Land Management, 5152 Hillsdale Circle, El Dorado Hills, CA 95762; attn: David Christy, email *dchristy@blm.gov.* Completed applications for the Northern California RAC should be sent to the Bureau of Land Management, 1695 Heindon Road, Arcata, CA 95521; attn: Leiskya Parrott, email *lparrott@blm.gov.*

FOR FURTHER INFORMATION CONTACT: David Christy, Central California District Public Affairs Officer, regarding the Central California RAC and Carrizo MAC, phone 916–941–3146, or email: *dchristy@blm.gov.* For further information on the Northern California RAC, contact Leiskya Parrott, Northern California District Acting Public Affairs Officer, phone 707 825–2313, email *lparrott@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the Central California and Northern California RACs and Carrizo MAC pursuant to section 309 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1739) and in conformity with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. Appendix 2). The councils advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the respective geographic areas. The Secretary appoints persons who are representatives of the various major citizen interests pertaining to land-use planning and management of the lands under BLM management.

Each member of the two RACs will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories of interest listed below. As appropriate, certain council members may be appointed as Special Government Employees, who serve on the councils without compensation, and are subject to financial disclosure requirements in the Ethics in Government Act and 5 CFR part 2634.

This notice, published pursuant to 43 CFR 1784.4–1, solicits public nominations to fill positions on the councils. The five positions open in the Central California RAC are in the following categories:

Category One (three positions)—Public land ranchers and representatives of organizations associated with energy and mineral development, the timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation.

Category Two (one position)—Representatives of nationally or regionally recognized environmental organizations, archaeological and historical organizations, dispersed recreation activities, and wild horse and burro organizations.

Category Three (one position)—Representatives of State, county, or local elected office; representatives and employees of a State agency responsible for the management of natural resources; representatives of Indian Tribes within or adjacent to the area for which the RAC is organized; representatives and employees of academic institutions who are involved in natural sciences; and the public-at-large.

The Northern California RAC has five openings in the following membership categories:

Category One—(Two positions) Members are public land ranchers and representatives of organizations associated with energy and mineral development, the timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation.

Category Two—(One position) The group includes representatives of nationally or regionally recognized environmental organizations, archaeological and historical organizations, dispersed recreation activities, and wild horse and burro organizations.

Category Three—(Two positions) The group consists of elected representatives of State, county or local government; representatives and employees of a State agency responsible for the management of natural resources; representatives of Indian tribes within or adjacent to the area for which the RAC is organized; representatives and employees of academic institutions who are involved in natural sciences; and the public-at-large. For the Carrizo MAC, five positions are open representing the Carrizo Native American Advisory Committee, those authorized to graze livestock within the monument and the public-at-large.

Nomination forms and additional information about the advisory groups are available on the Internet at *http://www.blm.gov/ca/st/en/info/rac.html.*

Any individual or organization may nominate one or more persons to serve on the RAC or MAC. Individuals may nominate themselves for RAC or MAC membership. Nominations packages must include a letter of nomination, a completed nomination form, letters of reference from the represented interest groups or organizations associated with the interests represented by the candidate, and any other information that speaks to the candidate's qualifications.

The specific category the nominee would represent should be identified in the letter of nomination and in the nomination form.

The BLM-California State Director and District Manager will review the nomination forms and letters of reference. The State Director shall confer with the Governor of the State of California on potential nominations, and then will forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current U.S. General Services Administration rates. The committees will meet at least twice a year. Additional meetings may be called by the Designated Federal Officer.

The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Authority: 43 CFR 1784.4–1.

Dereck Wilson,

Acting Central California District Manager.

[FR Doc. 2016–19428 Filed 8–15–16; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. 16XL5017AR. L57000000.RB0000]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW178492, Wyoming

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: Per the Mineral Leasing Act of 1920, Hilcorp Energy I, L.P. filed a petition for reinstatement of competitive oil and gas lease WYW178492, in Crook County, Wyoming. The petition was filed on time, and the lessee paid the required rentals accruing from the date of termination. No leases that affect these lands were issued before the petition was filed.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Chief of Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; phone 307–775–6176; email *chite@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Mr. Hite during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Consistent with applicable requirements the lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively, as part of the lease reinstatement. The lessee has also agreed to the amended lease stipulations for the lease described in the associated Reinstatement Certification.

The lessee has paid the required $500 administrative fee and the $159 cost for publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920. The BLM proposes to reinstate the lease effective January 1, 2013, under the original terms and conditions of the lease, the amended lease stipulations, and the increased rental and royalty rates cited above.

Chris Hite,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2016–19429 Filed 8–15–16; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2016–0045]

Atlantic Wind Lease Sale 7 (ATLW–7) for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore North Carolina (Kitty Hawk)—Proposed Sale Notice and Request for Interest; MMAA104000

AGENCY: Bureau of Ocean Energy Management (BOEM or "the Bureau"), Interior.

ACTION: Proposed sale notice and request for interest for commercial leasing for Wind Power on the outer continental shelf offshore North Carolina (Kitty Hawk).

SUMMARY: This is the Proposed Sale Notice (PSN) for the sale of one commercial wind energy lease on the Outer Continental Shelf (OCS) offshore Kitty Hawk, North Carolina, pursuant to 30 CFR 585.216. BOEM proposes to offer Lease OCS–A 0508 for sale using an ascending-bid auction. In this PSN, you will find information pertaining to the area available for leasing, proposed lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. BOEM invites public comment during a 60-day comment period following publication of this notice. The issuance of the proposed lease resulting from this sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by the auction winner, would be subject to subsequent environmental and technical reviews prior to a decision to proceed with development. This document is also a Request for Interest (RFI), pursuant to 30 CFR 585.212, to assess if there has been a change in competitive interest in the area encompassing proposed lease OCS–A 0508 since the publication of the North Carolina Call for Information and Nominations (Call) (77 FR 74204) on December 13, 2012. If BOEM determines that competitive interest in the proposed lease area (OCS–A 0508) still exists, BOEM will proceed with the competitive process set forth in 30 CFR 585.211 through 585.225. If BOEM determines competitive interest in the proposed lease area (OCS–A 0508) no longer exists because only one potential lessee is interested in the area, BOEM may proceed with the non-competitive process set forth in 30 CFR 585.231(d)-(i) following the receipt of the acquisition fee specified in 30 CFR 585.502(a).

DATES: Comments should be submitted electronically or postmarked no later than October 17, 2016. All comments received or postmarked during the comment period will be made available to the public and considered prior to publication of the Final Sale Notice (FSN).

Everyone wishing to participate as a bidder in the proposed Kitty Hawk lease sale must respond to this notice by the end of the 60-day comment period. Prospective bidders whom BOEM has already determined are qualified to hold an OCS lease for commercial wind energy development offshore North

Carolina must submit a response to this notice affirming their continued interest in the proposed lease area. Those who are not yet qualified, but wish to participate as bidders in the proposed lease sale, must submit qualification materials by the end of the 60-day comment period. All qualification materials must be postmarked no later than October 17, 2016.

ADDRESSES: Potential auction participants, Federal, state, and local government agencies, tribal governments, and other interested parties are requested to submit their written comments on the PSN in one of the following ways:

1. *Electronically: http://www.regulations.gov.* In the entry entitled, "Enter Keyword or ID," enter BOEM–2016–0045 then click "search." Follow the instructions to submit public comments.

2. *Written Comments:* In written form, delivered by hand or by mail, enclosed in an envelope labeled, "Comments on North Carolina PSN" to: BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1320.

3. *Qualifications Materials:* Those submitting qualifications materials should contact William Waskes, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1320, or *Will.Waskes@boem.gov.* If you wish to protect the confidentiality of your qualification materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption "Contains Confidential Information" and consider submitting such information as a separate enclosure. Treatment of confidential information is addressed in the section of this PSN entitled "Protection of Privileged or Confidential Information." Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

4. *Interest Affirmation Materials:* Potential bidders who submitted nominations in the response to the Call, have been qualified for this sale, and wish to participate in the sale should contact William Waskes, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1320, or *Will.Waskes@boem.gov.* If you wish to protect the confidentiality of your materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption "Contains Confidential Information" and consider submitting such information as a separate enclosure. Treatment of confidential information is addressed in the section of this PSN entitled "Protection of Privileged or Confidential Information." Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Will Waskes, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1320 or *Will.Waskes@boem.gov.*

Authority: This PSN and RFI is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (OCSLA), as amended by section 388 of the Energy Policy Act of 2005 (EPAct), and the implementing regulations at 30 CFR part 585, including 30 CFR 585.211, 585.212, and 585.216.

Background

Area for Proposed Leasing

The area described for leasing in this PSN, the Kitty Hawk Leasing Area (LA), is the same as the Kitty Hawk Wind Energy Area (WEA) that BOEM announced on August 11, 2014. The Area Identification announcement is available at: *http://www.boem.gov/North-Carolina/.*

The Wilmington East and Wilmington West WEAs, which were also announced on August 11, 2014, have been realigned with the planning and leasing process for the South Carolina Call Areas. BOEM believes that by realigning the leasing process for these areas, a number of existing issues can be addressed in a holistic manner. For example, the entire Wilmington West WEA, a portion of the Wilmington East WEA, and the South Carolina Grand Strand Call Area (80 FR 73818) are all located within the newly expanded North Atlantic right whale (NARW) critical habitat (81 FR 4838). Further, the State of North Carolina and a number of coastal localities in southern North Carolina have expressed concerns regarding potential visual impacts that could result from wind development offshore North Carolina. Many of these communities have requested that BOEM remove from leasing consideration all areas within 24 nautical miles (nm) of their respective locations, which would include all of Wilmington West, a portion of Wilmington East, and a portion of the Grand Strand Call Area. This is in contrast to South Carolina, where coastal localities such as the City of North Myrtle Beach have indicated that they are in favor of offshore wind development even if it would be located close to shore. Finally, because the Wilmington West WEA is contiguous with the Grand Strand Call Area, wake effects could impact the productivity and viability of multiple offshore wind developments within these areas.

Environmental Reviews

On January 23, 2015, BOEM published a Notice of Availability (NOA) of an Environmental Assessment (EA) for commercial wind lease issuance and site assessment activities on the Atlantic OCS offshore North Carolina with a 30-day public comment period (80 FR 3621). In response to the NOA, BOEM received 195 comments, which are available at *http://www.regulations.gov,* Docket No. BOEM–2015–0001. Many of the comments focused on mitigation measures to protect wildlife, specifically marine mammals. Based on the comments received in response to the EA, public outreach, information meetings, and new information received, BOEM decided to make revisions to the EA originally published in January 2015. As a result of the analysis in the revised EA, BOEM issued a Finding of No Significant Impact (FONSI) on September 18, 2015 (80 FR 56494). The revised EA and FONSI can be found at: *http://www.boem.gov/North-Carolina/.*

BOEM also considered the comments received when developing mitigation measures that will be enforced through the terms, conditions, and stipulations in Addendum C of the proposed lease (OCS–A 0508). These mitigation measures are designed to reduce or eliminate impacts from survey activities. They are based on the best available science and BOEM's Endangered Species Act (ESA) consultation with the National Marine Fisheries Service (NMFS). Additional mitigation measures related to the installation and operation of meteorological towers and/or buoys will be included as terms and conditions of the lessee's Site Assessment Plan (SAP) approval. BOEM will continue to work with interested stakeholders and reassess mitigation measures as research and data become available.

In addition, BOEM has concluded consultations under the ESA and the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) covering the proposed lease sale, associated site characterization surveys, and subsequent site assessment activities. BOEM will initiate consultations with the States of North Carolina and Virginia under the Coastal Zone Management Act (CZMA) concurrent with the publication of this PSN.

In order to guide its consultation under section 106 of the National Historic Preservation Act (NHPA) for renewable energy activities offshore North Carolina, BOEM executed a programmatic agreement (PA) with the State Historic Preservation Officer of North Carolina and the Advisory Council on Historic Preservation. The PA provides for consultation to continue throughout BOEM's commercial leasing process and the decisionmaking process regarding the approval, approval with modification, or disapproval of a lessees' SAP, Construction and Operations Plan (COP), or other plan. In addition, the PA allows for phased identification and evaluation of historic properties. The PA can be found at: *http://www.boem.gov/South-Atlantic-Renewable-Energy-Activities/.*

On May 7, 2015, BOEM completed its section 106 review for the undertaking of issuing commercial leases within the North Carolina WEAs and published a Finding of No Historic Properties Affected For the Issuance of Commercial Leases within the Kitty Hawk, Wilmington East and Wilmington West Wind Energy Areas For Wind Energy Development on the Outer Continental Shelf Offshore North Carolina. The Finding can be found at: *http://www.boem.gov/NC-WEAs-Lease-Issuance/.*

Additional environmental reviews and consultations will be conducted upon receipt of the Lessee's SAP and COP.

Additional Participation in the Proposed Lease Sale

Any parties wishing to participate in the proposed Kitty Hawk lease sale that have not already been legally, financially, and technically qualified to hold a lease for commercial wind development offshore North Carolina must submit the required qualification materials by the end of the 60-day comment period for this notice. Guidelines to prospective lessees on BOEM's requirements to qualify for and hold a renewable energy lease on the OCS and the type of information that should be submitted to demonstrate your legal, technical, and financial qualifications can be found at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/QualificationGuidelines-pdf.aspx.* Documentation you submit must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a storage media device to be an acceptable format for submitting an electronic copy. Please note that it may take a number of weeks for BOEM to assess a potential bidder's legal, technical, and financial qualifications. BOEM advises potential bidders who plan to participate in a sale to establish their qualifications promptly. It is not uncommon for BOEM to request additional materials establishing qualifications following an initial review of the qualifications package. BOEM cannot determine a potential bidder to be qualified without a complete qualification package. Potential bidders who BOEM has not determined to be qualified before the FSN is published will not be allowed to participate in the proposed sale.

Request for Interest

Affirmation of Interest Received in Response to the North Carolina Call for Information and Nominations of Interest for the Kitty Hawk WEA

Legally, technically, and financially qualified entities who submitted a nomination in response to the North Carolina Call must respond to this notice and indicate whether: (1) They wish to continue with their Call nomination for the Kitty Hawk WEA; or (2) they wish to withdraw their Call nomination from further consideration. If such entities do not respond by the comment period deadline associated with this notice, BOEM will deem their nominations submitted in response to the North Carolina Call to be withdrawn, and they will not be able to participate in the proposed lease sale. BOEM is issuing this Request for Interest due to the large amount of time that has elapsed since its initial solicitation of commercial interest through its Call in December 2012 and the experience of past lease sales, in which a significant number of companies that expressed competitive interest in response to the Call choose not to submit a Bidder's Financial Form (BFFs) or Bid Deposits.

Deadlines and Milestones for Bidders: This section describes the major deadlines and milestones in the auction process from publication of this PSN to execution of the lease pursuant to this proposed sale. This process is organized into five stages: (1) The PSN comment period; (2) from the end of PSN comment period to publication of the FSN; (3) the FSN waiting period; (4) conducting the auction; and (5) from the auction to Lease Execution.

The PSN Comment Period

- *Submit Comments:* The public is invited to submit comments during this 60-day period, which will expire on October 17, 2016.
- *Public Seminar:* BOEM will host a public seminar to discuss the lease sale process and the auction format. The time and place of the seminar will be announced by BOEM and published on the BOEM Web site at *http://www.boem.gov/North-Carolina/.* No registration or RSVP is required to attend.
- *Submit Qualifications Materials:* All qualifications materials must be received by BOEM by the end of the 60-day PSN comment period, October 17, 2016. This includes materials sufficient to establish a company's legal, technical, and financial qualifications pursuant to 30 CFR 585.106–107.
- *Submit Interest Affirmation Materials:* In order to participate in the proposed Kitty Hawk lease sale, potential bidders whom BOEM has determined to be legally, technically, and financially qualified to hold an OCS lease for commercial wind energy development offshore North Carolina, must submit a response to this notice affirming their continued interest in participating in the proposed lease sale by the end of the 60-day comment period, October 17, 2016.

End of PSN Comment Period to FSN Publication

- *Review Comments:* BOEM will review all comments submitted in response to the PSN during the comment period.
- *Finalize Qualifications Reviews:* BOEM will complete any outstanding reviews of bidder qualifications materials submitted during the PSN comment period and requested by BOEM prior to the publication of the FSN. The final list of eligible bidders will be published in the FSN.
- *Prepare the FSN:* Should BOEM determine that competitive interest still exists in leasing the Kitty Hawk WEA, and BOEM decides to move forward with a lease sale, BOEM will prepare the FSN by updating information contained in the PSN where appropriate.
- *Publish FSN:* If BOEM decides to move forward with a lease sale, BOEM will publish the FSN in the **Federal Register**.

FSN Waiting Period. During this period, qualified bidders must take several steps before participating in the auction.

- *Bidder's Financial Form (BFF):* BOEM must receive each qualified bidder's completed and signed BFF no later than the date listed in the FSN. Typically, this deadline is approximately 14 calendar days after publication of the FSN in the **Federal**

Register. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. Blank BFFs can be found at: *http://www.boem.gov/North-Carolina/.* Once the BFF has been processed, bidders may log into *pay.gov* and submit bid deposits. BOEM will only accept an originally executed paper copy of the BFF, and will not consider for this auction BFFs submitted for previous lease sales. The BFF must be executed by an authorized representative as shown on the bidder's legal qualifications. Each bidder is required to sign the self-certification in the BFF, in accordance with 18 U.S.C. 1001 (Fraud and False Statements).

- *Bid Deposits:* Each qualified bidder must submit a bid deposit of $450,000 no later than the date listed in the FSN. Typically, this deadline is approximately 30 calendar days after the publication of the FSN. BOEM will consider extensions to this deadline only if BOEM determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control.
- *Mock Auction:* BOEM will hold an online Mock Auction that is open only to qualified bidders who have met the requirements and deadlines for auction participation, including submission of the bid deposit. Final details of the Mock Auction will be provided in the FSN.

Conduct of the Auction. BOEM, through its contractor, will hold an auction as described in the FSN. The auction will take place no sooner than 30 days following publication of the FSN in **Federal Register**. The estimated timeframes described in this PSN assume the auction will take place approximately 45 days after publication of the FSN.

From Auction to Lease Execution. There are several steps between the conclusion of the auction and execution of the lease.

- *Bid Deposit Refund:* BOEM will refund the bid deposit of any bidder that did not win the lease. BOEM will provide a written explanation of why the bidder did not win.
- *Department of Justice (DOJ) Review:* The DOJ has 30 days in which to conduct an antitrust review of the auction in consultation with the Federal Trade Commission, pursuant to 43 U.S.C § 1337(c).
- *Delivery of the Lease:* BOEM will send three lease copies to the winner, with instructions on how to sign the lease. The first year's rent is due 45 days after the winner receives the lease copies for execution.
- *Return the Lease:* Within 10 business days of receiving the lease copies, the auction winner must post financial assurance, pay any outstanding balance of their bonus bid (*i.e.,* winning monetary bid minus bid deposit), and sign and return the three signed lease copies.
- *Execution of the Lease:* Once BOEM has received the lease copies and verified that it has received all other required materials, BOEM will execute the lease if appropriate.

Area Proposed for Leasing: The area available for sale will be auctioned as one lease, Lease OCS–A 0508 (Kitty Hawk LA). The Kitty Hawk LA consists of 122,405 acres. A description of the proposed lease area can be found in Addendum A of the proposed lease, which BOEM has made available with this notice on its Web site at: *http://www.boem.gov/North-Carolina/.*

Map of the Area Proposed for Leasing

A map of the proposed Kitty Hawk LA, GIS spatial files, and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum, and geographic X, Y (longitude, latitude), NAD83 Datum can be found on BOEM's Web site at: *http://www.boem.gov/North-Carolina/.*

A large scale map of the area, showing boundaries of the area with numbered blocks, is available from BOEM upon request at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, Phone: (703) 787–1300, Fax: (703) 787–1708.

Withdrawal of Blocks: BOEM reserves the right to withdraw portions of the proposed lease area prior to its execution of the lease based upon relevant information provided to the Bureau.

Lease Terms and Conditions: BOEM has made available proposed terms, conditions, and stipulations for the OCS commercial wind lease to be offered through this proposed sale. If and when the lease is issued, BOEM reserves the right to require compliance with additional terms and conditions associated with approval of a SAP or COP. The proposed lease is on BOEM's Web site at: *http://www.boem.gov/North-Carolina/. The lease includes the following seven attachments:*

- Addendum A (Description of Leased Area and Lease Activities)
- Addendum B (Lease Term and Financial Schedule)
- Addendum C (Lease Specific Terms, Conditions, and Stipulations)
- Addendum D (Project Easement)
- Addendum E (Rent Schedule post COP approval)
- Appendix A to Addendum C (Incident Report: Protected Species Injury or Mortality)
- Appendix B to Addendum C (Required Data Elements for Protected Species Observer Reports)

Addenda A, B, and C provide detailed descriptions of lease terms and conditions. Addendum D will be completed at the time of COP approval or approval with modifications. Addendum E will be completed after COP approval or approval with conditions.

BOEM is soliciting comments on the provisions of Addendum C that require the submission of SAP and COP survey plans. Specifically, BOEM is interested in whether potential lessees and other stakeholders find the timeframes associated with those requirements to be reasonable, and whether those provisions could be written in a manner that better describes the realities associated with offshore wind survey efforts (*e.g.,* referring to "survey mobilizations" instead of "SAP surveys" and "COP surveys" specifically).

Plans. Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within 12 months of lease issuance and a COP at least 6 months before the end of the site assessment term of the lease.

Financial Terms and Conditions: This section provides an overview of the annual payments required of a lessee that are described in the proposed lease, and the financial assurance requirements that will be associated with the lease if it is awarded.

Rent. Pursuant to 30 CFR 585.224(b) and 585.503, the first year's rent payment of $3 per acre is due within 45 days of the date the lessee receives the lease for execution. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease (the "Lease Anniversary"). Once commercial operations under the lease begin, BOEM will charge rent only for the portions of the lease not authorized for commercial operations, *i.e.,* not generating electricity. However, instead of geographically dividing the lease area into acreage that is "generating" and "non-generating," the fraction of the lease accruing rent will be based on the fraction of the total nameplate capacity of the project that is not yet in operation. This fraction is calculated by dividing the nameplate capacity not yet authorized for commercial operations at the time payment is due by the anticipated nameplate capacity after full installation of the project (as described in the COP). The annual rent due for a given year is then derived by multiplying this fraction by the amount of rent that would have been due for the lessee's entire lease area at the rental rate of $3 per acre.

For example, a 122,405 acre lease (the size of the entire Kitty Hawk LA); will have a rent payment of $367,215 per year if no portion of the leased area is authorized for commercial operations. If 300 megawatts (MW) of a project's nameplate capacity is operating (or authorized for operation), and the approved COP specifies a maximum project size of 500 MW, the rent payment will be $146,886. This payment is based on the 200 MW of nameplate capacity BOEM has not yet authorized for commercial operations. For the above example, this would be calculated as follows: 200MW/500MW × ($3/acre × 122,405 acres) = $146,886.

If the lessee submits an application for relinquishment of a portion of its lease area within the first 45 calendar days following the date that the lease is received by the lessee for execution, and BOEM approves that application, no rent payment will be due on that relinquished portion of the lease area. Later relinquishments of any portion of the lease area will reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

The lessee also must pay rent for any project easement associated with the lease, commencing on the date that BOEM approves the COP (or modification thereof) that describes the project easement. Annual rent for a project easement that is 200 feet wide and centered on the transmission cable is $70 per statute mile. For any additional acreage required, the lessee must also pay the greater of $5 per acre per year or $450 per year.

Operating Fee

For purposes of calculating the initial annual operating fee payment and pursuant to 30 CFR 585.506, an operating fee rate is applied to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first twelve months of operations. This initial payment will be prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee payment is due within 45 days of the commencement of commercial operations. Thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary.

The subsequent annual operating fee payments are calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production for the project. For the purposes of this calculation, the imputed market value is the product of the project's annual nameplate capacity, the total number of hours in the year (8,760), the capacity factor, and the annual average price of electricity derived from a historical regional wholesale power price index. For example, the annual operating fee for a 100 MW wind facility operating at a 40% capacity (*i.e.,* capacity factor of 0.4) with a regional wholesale power price of $40/MWh and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 100\text{MW} \times 8{,}760\,\frac{\text{hrs}}{\text{year}} \times 0.4 \times \frac{\$40}{\text{MWh}}\,\text{Power Price} \times 0.02 = \$280.320$$

Operating Fee Rate. The operating fee rate is the share of imputed wholesale market value of the projected annual electric power production due to BOEM as an annual operating fee. For the proposed Kitty Hawk LA, BOEM will set the fee rate at 0.02 (*i.e.,* 2 percent) for the entire life of commercial operations.

Nameplate Capacity. Nameplate capacity is the maximum rated electric output, expressed in MW, that the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The lessee will specify in its COP the nameplate capacity available at the start of each year of commercial operations on the lease. For example, if the lessee specifies 20 turbines in its COP, and each is rated by the design manufacturer at 5 MW, the nameplate capacity of the wind facility would be 100 MW.

Capacity Factor. The capacity factor compares the amount of energy delivered to the grid during a period of time to the amount of energy the wind facility would have produced at full capacity. The amount of power delivered will always be less than the theoretical 100 percent capacity, largely because of the variability of wind speeds, transmission line loss, and down time for maintenance or other purposes.

The capacity factor is expressed as a decimal between zero and one, and represents the share of anticipated generation of the wind facility that is delivered to the interconnection grid (*i.e.,* where the lessee's facility interconnects with the electric grid) relative to the wind facility's generation at continuous full power operation at nameplate capacity. For the proposed lease area, BOEM has set the capacity factor for the year in which commercial operations commence and the six full years thereafter at 0.4 (*i.e.,* 40 percent). At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the capacity factor once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

Wholesale Power Price Index. Pursuant to 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MW-hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the PJM Dominion zone for the most recent year of spot price data available. The wholesale power price is adjusted for inflation from the year associated with the published spot price indices to the year in which the operating fee is to be due, based on the Lease Anniversary and using annual implicit price deflators as reported by the U.S. Department of Commerce Bureau of Economic Analysis. BOEM proposes to use the PJM Dominion power price as the price in its operating fee formula. BOEM is soliciting further comments on the merits of other electric power prices, including prices from other hubs within the PJM Virginia Power Company electric region that may be used in lieu of or in combination with the current proposed power price.

Financial Assurance

Within 10 business days after receiving the lease copies and pursuant to 30 CFR 585.515–516, the provisional winner of the Kitty Hawk LA must provide an initial lease-specific bond or other approved means of meeting the lessor's initial financial assurance requirements. The provisionally winning bidder may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand. BOEM encourages the provisionally winning bidder to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The financial terms described above can be found in Addendum B of the proposed lease, which BOEM has made available with this notice on its Web site at: *http://www.boem.gov/North-Carolina/.*

Bid Deposit: A bid deposit is an advance cash payment submitted to BOEM in order to participate in the auction. Each qualified bidder must submit a bid deposit of $450,000 no later than the deadline provided in the FSN. Any qualified bidder who fails to submit the bid deposit by this deadline may be disqualified from participating in the auction. Bid deposits will be accepted online via *pay.gov.*

Following the auction, bid deposits will be applied against bonus bids or other obligations owed to BOEM. If the bid deposit exceeds a bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund bid deposits to non-winners.

Bidder Financial Form: Each bidder must fill out the BFF referenced in this PSN. BOEM has also made a copy of the form available with this notice on its Web site at: *http://www.boem.gov/North-Carolina/.* BOEM recommends that each bidder designate an email address in its BFF that the bidder will then use to create an account in *pay.gov* (if it has not already done so). Bidders may then use the Bid Deposit Form on the *pay.gov* Web site to leave a deposit.

BOEM will not consider BFFs submitted by qualified bidders for previous lease sales to satisfy the requirements of the proposed Kitty Hawk lease sale. BOEM will also only consider BFFs submitted after the deadline if BOEM determines that the failure to timely submit the BFF was caused by events beyond the bidder's control. BOEM will only accept an original, executed paper copy of the BFF. The BFF must be executed by an authorized representative who has been identified in the qualifications package on file with BOEM as authorized to bind the company.

Minimum Bid: The minimum bid is the lowest price BOEM will accept as a winning bid. BOEM has established a minimum bid per acre of $2.00 or $244,810 for the proposed lease sale.

Auction Procedures: The following is a summary of the auction procedures that BOEM proposes to use if it proceeds with the proposed Kitty Hawk lease sale.

Summary of Auction Format

As authorized under 30 CFR 585.220(a)(2) and 585.221(a)(1), BOEM intends to conduct the proposed lease sale using an ascending bidding auction with cash as the bid variable. Using an online bidding system to host the auction, BOEM sets an initial asking price for Lease OCS–A 0508 and increases that price incrementally until no more than one active bidder remains in the auction. A bid submitted at the full asking price for the lease in a particular round is referred to as a live bid. During each round, active bidders may: (1) Submit a live bid indicating that they are interested in acquiring the lease at the current round's stated asking price, or (2) submit an exit bid (see below for discussion of exit bids). All bids are considered binding until BOEM has determined the winning bid.

A bidder remains active in the auction as long as it continues to meet BOEM's asking price in each round. If more than one live bid is received in a round, BOEM increases the asking price incrementally and conducts another auction round. BOEM would raise the asking price following any round in which two or more bidders submitted live bids. The auction concludes at the end of the round in which the number of live bids received falls to one or zero.

Asking price increments are in BOEM's sole discretion. They will be determined round-by-round and based on a number of factors, including, but not necessarily limited to, the number of bidders remaining in the lease sale, the expected time needed to conduct the auction, and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease bidding increments as necessary.

Between rounds, BOEM will disclose to all bidders eligible to bid in the next round: (1) The number of live bids in the previous round of the auction (*i.e.,* the level of demand); and (2) the asking price in the upcoming round of the auction.

If a bidder is not willing to meet the asking price in the upcoming round, the bidder may submit an exit bid and then exit the auction. Bidders exiting the auction are allowed to submit one exit bid at an offer price greater than the asking price in the previous round, but less than the asking price in the current round. Exit bids allow bidders to express precisely the maximum price they are willing to offer while also minimizing the chance of ties. If a bidder does not submit any bid at all in the current round, BOEM will treat the bidder as having submitted an exit bid in the current round at the previous round's asking price. If a bidder exits the auction by placing an exit bid (or by not submitting any bid at all) in the current round, it will not be allowed to submit bids in any subsequent round. BOEM will not consider exit bids for the purpose of determining whether to increase the asking price or to end the auction.

After the final round of the auction, BOEM will determine the provisionally winning bidder to be the bidder with the highest bid, whether the bid was a live bid or an exit bid. If there is a tie, BOEM will resolve the tie by randomized means. The provisionally winning bidder may be disqualified if it is subsequently found to have violated auction rules or otherwise engaged in conduct detrimental to the integrity of the competitive auction.

The auction winner for the proposed lease sale will have 10 business days from receiving the lease to post financial assurance, pay any outstanding balance of its bonus bid, and sign and return three copies of the lease. BOEM reserves the right not to issue the lease to the provisionally winning bidder if that bidder fails to timely sign and pay for the lease or otherwise fails to comply with applicable regulations or terms of the FSN. In that case, that bidder will forfeit its bid deposit. If a bidder fails to timely pay the full amount due, BOEM may consider this to be an indication that the bidder is no longer financially qualified to participate in other lease sales under BOEM's regulations at 30 CFR 585.106—107. If a winning bidder does not sign the lease pursuant to the proposed lease sale, BOEM reserves the right to identify the next highest bid submitted during the proposed lease sale and offer the lease pursuant to this bid.

Additional Information Regarding the Auction Format

Bidder Authentication

For the proposed online auction, BOEM will require two-factor authentication. Prior to the auction, BOEM will send several bidder authentication packages to the bidders shortly after BOEM has processed the BFFs. One package will contain digital authentication tokens for each authorized individual. The tokens will be sent to the primary point of contact indicated on the BFF. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. *Bidders are to ensure that each token is returned within three business days following the auction.* An addressed, stamped envelope will be provided to facilitate this process. In the event that a bidder fails to submit a bid deposit or does not participate in the proposed auction, BOEM will de-activate that bidder's token and login information, and the bidder will likewise be asked to return its tokens within three business days following the auction.

The second package contains login credentials for authorized bidders. The login credentials will be sent to the address provided in the BFF for each authorized individual. Bidders can confirm these addresses by calling 703–787–1320. This package will contain user login information and instructions for accessing the Auction System Technical Supplement and Alternative Bidding Form. The login information, along with the tokens, will be tested during the Mock Auction.

Timing of Auction

The FSN will provide specific information regarding when bidders can enter the auction system and when the proposed auction will start. Once bidders have logged in, they should review the auction schedule, which lists the start, end, and recess times of each round in the auction. Each round is structured as follows:

- Bidding round begins;
- Bidders enter their bids;
- Bidding round ends and the recess begins;
  - During the recess, the number of live bids received in the previous round and the next round's asking price are posted;
  - Bidders review the previous round results and prepare their next round's bids; and
  - Next bidding round begins.

The first round will last about 30 minutes, though subsequent rounds may be shorter. Recesses are anticipated to last approximately 10 minutes. The descriptions of the auction schedule and asking price increments included in the PSN and FSN are tentative. Bidders should consult the auction schedule on the bidding Web site just before and during the auction for updated times. BOEM anticipates the proposed auction will last one or two business days, but bidders are advised to prepare to continue bidding for additional business days if necessary, to resolve the auction.

BOEM and the auction contractor will use the auction platform messaging service to keep bidders informed on issues of interest during the proposed auction. BOEM will use the messaging system for auction schedule changes and other updates during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show how much time remains in the round. Bidders have until the scheduled ending time to place bids. Bidders should bid according to the procedures described in both the FSN and the Auction System Technical Supplement. No information about bidding during a given round is available until the round has closed and results have been posted, so there is no tactical advantage to placing bids early or late in the round.

The timing of the auction will be elaborated on and clarified in the Auction System Technical Supplement which is available on BOEM's Web site at: *http://www.boem.gov/North-Carolina/* if and when the FSN is published in the **Federal Register.** The Auction System Technical Supplement will describe auction procedures that are incorporated by reference into the FSN, except in the unexpected circumstance that any of the information in the Auction System Technical Supplement is inconsistent with the FSN, in which case the provisions of the FSN will take precedence.

Alternate Bidding Procedures

Alternate Bidding Procedures enable a bidder who is having difficulties accessing the Internet to submit its bid via fax using an Alternate Bidding Form available on BOEM's Web site at: *http://www.boem.gov/North-Carolina/.*

In order to be authorized to use an Alternative Bidding Form, a bidder must call the help desk number listed in the Auction Manual *before* the end of the round. BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company. The bidder must explain the reasons for which he/she cannot place a bid using the online bidding platform. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using the Alternate Bidding Procedures.

If bidders need to submit an Alternate Bidding Form, they are strongly encouraged to do so before the round ends.

Rejection or Non-Acceptance of Bids: BOEM reserves the right and authority to reject any and all bids that do not satisfy the requirements and rules of the proposed auction, the FSN, or applicable regulations and statutes.

Anti-Competitive Review

This sale is subject to Federal antitrust laws. Accordingly, following the auction, but before the acceptance of the bid and the issuance of the lease, BOEM will "allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review the results of the lease sale." 43 U.S.C. 1337(c). If a provisionally winning bidder is found to have engaged in anti-competitive practices in connection with this sale, BOEM may reject its bid.

Anti-competitive practices may include, but are not limited to:

- An express or tacit agreement among bidders not to bid in an auction, or to bid at a particular price;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the potential to affect the final auction price.

BOEM will decline to award the lease if the Attorney General, in consultation with the Federal Trade Commission, determines that doing so would be inconsistent with the antitrust laws. *See* 43 U.S.C. 1337(c).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see *http://www.justice.gov/atr/public/business-resources.html,* or consult legal counsel.

Process for Issuing the Lease: Once all post-auction reviews have been completed to BOEM's satisfaction, BOEM will issue three unsigned copies of the lease to the provisionally winning bidder. Within 10 business days after receiving the lease copies, the provisionally winning bidder must:

1. Sign and return the lease copies on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515–537; and
3. Pay by electronic funds transfer (EFT) the balance (if any) of the bonus bid (winning bid less the bid deposit). BOEM requires bidders to use EFT procedures (not *pay.gov,* the Web site bidders used to submit bid deposits) for payment of the balance of the bonus bid, following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on BOEM's Web site at: *http://www.boem.gov/North-Carolina/.*

BOEM will not execute a lease until the three requirements above have been satisfied, the provisionally winning bidder's financial assurance has been accepted pursuant to 30 CFR 585.515, and the provisionally winning bidder's payment has been processed.

BOEM may extend the 10 business day deadline for executing the lease on the bidder's behalf, filing the required financial assurance, and/or paying the balance of the bonus bid, but only if BOEM determines the delay was caused by events beyond the provisionally winning bidder's control.

If the provisionally winning bidder does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right not to issue the lease to that bidder. In such a case, the provisionally winning bidder will forfeit its bid deposit.

Within 45 days of the date that the provisionally winning bidder receives copies of the lease, it must pay the first year's rent using the *pay.gov* Renewable Energy Initial Rental Payment form available at: *https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604.*

Subsequent annual rent payments must be made following the detailed instructions contained in the "Instructions for Making Electronic Payments," available on BOEM's Web site at: *http://www.boem.gov/North-Carolina/.*

Non-Procurement Debarment and Suspension Regulations: Pursuant to regulations at 43 CFR part 42, subpart C, an OCS renewable energy lessee must comply with the Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR 180 and 1400. The lessee must also communicate this requirement to persons with whom the lessee does business relating to this lease, by including this term as a condition in their contracts and other transactions.

Force Majeure: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any auction details specified in the FSN, including the date and time, in case of a *force majeure* event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to: Natural disasters (*e.g.,* earthquakes, hurricanes, floods, blizzards), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, or through the BOEM Web site at: *http://www.boem.gov/Renewable-Energy-Program/index.aspx.* Bidders should call 703–787–1320 if they have concerns.

Appeals: The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

(a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons and refund any money deposited with your bid, without interest.

(b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing final decisions with respect to lease sales are described in 30 CFR 585.118(c).

Protection of Privileged or Confidential Information

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to "trade secrets and commercial or financial information that you submit that is privileged or confidential." 5 U.S.C. 552(b)(4). If you wish to protect the confidentiality of such information, clearly mark it "Contains Privileged or Confidential Information" and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by FOIA. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

BOEM will not treat as confidential aggregate summaries of otherwise confidential information or comments not containing such information. Additionally, BOEM will not treat as confidential the legal title of the commenting entity (*e.g.,* the name of your company).

Dated: August 9, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–19552 Filed 8–15–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 167R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of *1939,* and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports

ARRA	American Recovery and Reinvestment Act of 2009
BCP	Boulder Canyon Project
Reclamation	Bureau of Reclamation
CAP	Central Arizona Project
CUP	Central Utah Project
CVP	Central Valley Project
CRSP	Colorado River Storage Project
FR	Federal Register
IDD	Irrigation and Drainage District
ID	Irrigation District
M&I	Municipal and industrial
NMISC	New Mexico Interstate Stream Commission
O&M	Operation and maintenance
OM&R	Operation, maintenance, and replacement
P–SMBP	Pick-Sloan Missouri Basin Program
PPR	Present Perfected Right
RRA	Reclamation Reform Act of 1982
SOD	Safety of Dams
SRPA	Small Reclamation Projects Act of 1956
USACE	U.S. Army Corps of Engineers
WD	Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

New contract actions:

17. *Willow Creek District Improvement Company, Willow Creek Project, Oregon:* Amend to increase the amount of storage water made available under the existing long-term contract from 2,500 to 3,500 acre-feet.

18. *East Columbia Basin ID, Columbia Basin Project, Washington:* Amendment of renewal master water service contract, contract No. 159E101882, to authorize up to an additional 70,000 acres within the District that are located within the Odessa Subarea and eligible to participate in the Odessa Groundwater Replacement Program, to receive Columbia Basin Project irrigation water service.

19. *Talent, Medford, and Rogue River Valley IDs; Rogue River Basin Project; Oregon:* Contracts for repayment of reimbursable shares of SOD program modifications for Hyatt Dam.

20. *Stanfield ID, Umatilla Basin Project, Oregon:* A long-term water service contract to provide for the use of conjunctive use water, if needed, for the purposes of pre-saturation or failure of District diversion facilities.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

The Mid-Pacific Region has no updates to report for this quarter.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

New contract actions:

21. *Imperial ID, Lower Colorado River Water Supply Project, California:* Develop an agreement between Reclamation and Imperial ID for the funding of design, construction, and installation of power facilities for the Project.

22. *Mohave County Water Authority, BCP, Arizona:* Amend Exhibit B to the Authority's Colorado River water delivery contract to update the annual diversion amounts to be used within the contract service areas.

23. *City of Chandler and the Gila River Indian Community, CAP, Arizona:* Approve a CAP water lease for the Community to lease 2,450 acre-feet per year of its CAP water to Chandler for 100 years. (The United States is not a party to this lease agreement, but must approve the lease agreement pursuant to the Arizona Water Settlements Act and the Community's amended CAP water delivery contract.)

24. *City of Chandler and the Gila River Indian Community, CAP, Arizona:* Approve a reclaimed water exchange agreement beginning January 1, 2019, for 50 years. The Agreement will allow for the exchange of Chandler reclaimed water for Community CAP water. The Community will accept delivery of up to 4,225 acre-feet per year of Chandler reclaimed water, in exchange for up to 3,380 acre-feet of Community CAP water. (The United States is not a party to this agreement, but must approve the agreement pursuant to the Arizona Water Settlements Act.)

25. *Avra Water Co-op, Inc. and the Town of Marana, CAP, Arizona:* Execute a proposed assignment to the Town of Marana of Avra Water Co-op's 808 acre-foot annual CAP M&I water entitlement. This proposed action will increase the Town of Marana's entitlement to 2,336 acre-feet per annum and will eliminate Avra Water Co-op's entitlement.

Completed contract actions:

16. *San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona:* Execute Amendment No. 5 to a CAP water lease to extend the term of the lease in order for the San Carlos Apache Tribe to lease 20,000 acre-feet of its CAP water to the Town of Gilbert during calendar year 2016. Contract executed March 23, 2016.

19. *Ak-Chin Indian Community and Del Webb Corporation, CAP, Arizona:* Execute a CAP water lease in order for Ak-Chin Indian Community to lease 2,800 acre-feet of its CAP water to the Del Webb Corporation during calendar year 2016. Contract completed May 12, 2016.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New contract actions:

32. *Utah Division of State Parks, Utah:* Requested an early renewal of its 11 State Parks Agreement for recreation management at various Reclamation Reservoirs.

33. *State of Wyoming, Seedskadee Project; Wyoming:* The Wyoming Water Development Commission is interested in purchasing an additional 65,000 acre-feet of M&I water from Fontenelle Reservoir.

34. *Newton Water Users Association, Newton Project; Utah:* The Utah Division of Wildlife Resources desires to install a fish screen on the outlet works of Newton Dam. This requires a supplementary O&M agreement to approve modification to Federal Reclamation facilities.

35. *Strawberry High Line Canal Company, Strawberry Valley Project; Utah:* The Strawberry High Line Canal Company has requested a conversion of up to 20,000 acre-feet of irrigation water to be allowed for miscellaneous use.

36. *Sweetwater County; Flaming Gorge Unit, CRSP; Wyoming:* Sweetwater County has requested a water service contract for 1 acre-foot of M&I water annually from Flaming Gorge Reservoir.

37. *Grand Valley Water Users Association and Orchard Mesa ID, Grand Valley Project, Colorado:* A contract for repayment of extraordinary maintenance of the Grand Valley Power Plant funded pursuant to Subtitle G of Public Law 111–11.

Completed contract actions:

8. *Provo Reservoir Water Users Company, Provo River Project, Utah:* The Company has requested a contract to store up to 5,000 acre-feet on its nonproject water in Deer Creek Reservoir on a space-available basis under the authority of the Warren Act of 1911. Contract executed April 20, 2016.

16. *Aamodt Litigation Settlement, San Juan-Chama Project, New Mexico:* Contract for 1,079 acre-feet of San Juan-Chama Project water for M&I use with the four Pueblos included in the Aamodt Litigation Settlement Act, Title VI of Public Law 111–291. The four Pueblos are the Nambe, Pojoaque, San Ildefonso, and Tesuque. Contract executed January 21, 2016.

30. *Jicarilla Apache Nation, Navajo Project, New Mexico:* Water service agreement between the Jicarilla Apache Nation and the San Juan Basin Water Haulers Association for delivery of 200 acre-feet of M&I water from the Jicarilla's settlement water from the Navajo Reservoir Supply. This agreement will have a term of 5 years (2016–2020) and will replace the expired previous agreement which was in place for 10 years. Contract became effective January 1, 2016.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

New contract action:

42. *Yellowtail Unit, P–SMBP, Montana:* Negotiation of a water allocation agreement with the Crow Tribe for 300,000 acre-feet of storage in Bighorn Lake pursuant to the Crow Tribe Water Rights Settlement Act of 2010 (Pub. L. 111–291, enacted December 8, 2010).

Discontinued contract actions:

35. *Bryan Hauxwell, Frenchman Cambridge Project, Nebraska:* Consideration of a long-term Warren Act contract.

39. *South Chester County WD; Lower Marias Unit, P–SMBP; Montana:* Consideration to renew of long-term M&I water service contract No. 14–06–600–2022A.

Completed contract actions:

20. *Altus Dam, W.C. Austin Project, Oklahoma:* Consideration of a contract(s) for repayment of SOD costs. Contract executed May 2, 2016.

23. *Savage ID; Savage Unit, P–SMBP; Montana:* Intent to renew the repayment contract to provide for a long-term-water supply to the District. Contract executed May 6, 2016.

25. *Guernsey Dam, North Platte Project, Nebraska and Wyoming:* O&M repayment contracts with North Platte Project contractors for the repayment of extraordinary maintenance associated with Guernsey Dam. Contract executed May 12, 2016.

37. *Mitchell County Rural Water District No. 2; Glen Eldecr Unit, P–SMBP; Kansas:* Consideration to renew long-term water delivery contract No. 7–07–70–W0108. Contract executed April 18, 2016.

42. *Yellowtail Unit, P–SMBP, Montana:* Negotiation of a water allocation agreement with the Crow Tribe for 300,000 acre-feet of storage in Bighorn Lake pursuant to the Crow Tribe Water Rights Settlement Act of 2010 (Pub. L. 111–291, enacted December 8, 2010). Contract executed March 30, 2016.

Dated: June 29, 2016.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2016–19483 Filed 8–15–16; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1017]

Certain Quartz Slabs and Portions Thereof (II); Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 11, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cambria company LLC of Belle Plaine, Minnesota. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain quartz slabs and portions thereof (II) by reason of infringement of U.S. Patent No. D712,666 (“the ’666 patent”); U.S. Patent No. D712,670 (“the ’670 patent”); U.S. Patent No. D751,298 (“the ’298 patent”); U.S. Patent No. D712,161 (“the ’161 patent”); and U.S. Patent No. D737,058 (“the ’058 patent”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2016).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on August 10, 2016, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain quartz slabs and portions thereof (II) by reason of infringement of the claim of the '666 patent; the claim of the '670 patent; the claim of the '298 patent; the claim of the '161 patent; and the claim of the '058 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Cambria Company LLC
805 Enterprise Drive East
Suite H
Belle Plaine, MN 56011

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Stylen Quaza LLC DBA Vicostone USA
11620 Goodnight Lane, Suite 100
Dallas, TX 75229

Vicostone Joint Stock Company
Hoalac Hi-tech Park
Thachthat, Hanoi
Vietnam

Building Plastics Inc.
3263 Sharpe Avenue
Memphis, TN 38111

Fasa Industrial Corporation, Ltd.
10th Floor, Building T6, Wisdom New Town
No. 2 Jihua Road, Chancheng District, Foshan, Guangdong Province 528000
China

Foshan FASA Building Material Co., Ltd.
10th Floor, Building T6, Wisdom New Town
No. 2 Jihua Road, Chancheng District, Foshan, Guangdong Province 528000
China

Solidtops LLC
27964 Oxford Road
Oxford, MD 21654

Dorado Soapstone LLC
940 S. Jason St., Unit 9
Denver, CO 80223

Pental Granite and Marble Inc.
713 South Fidalgo Street
Seattle, WA 98108

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Chief Administrative Law Judge is authorized to consolidate Inv. No. 337–TA–996 and this investigation if he deems it appropriate.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 11, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–19498 Filed 8–15–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Fresenius Kabi USA, LLC

ACTION: Notice of application.

SUMMARY: Registered bulk manufacturers of the affected basic class, and applicants therefor, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before September 15, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before September 15, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 13, 2016, Fresenius Kabi USA, LLC, 3159 Staley Road, Grand Island, New York 14072 applied to be registered as an importer of remifentanil (9739), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for product development and preparation of stability batches.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–19434 Filed 8–15–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: ALMAC Clinical Services Incorp (ACSI)

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before September 15, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before September 15, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 29, 2016, ALMAC Clinical Services Incorp (ACSI), 25 Fretz Road, Souderton, Pennsylvania 18964 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Oxycodone (9143)	II
Hydromorphone (9150)	II
Morphine (9300)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances in dosage form for clinical trial only. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–19439 Filed 8–15–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Cody Laboratories, Inc.

ACTION: Notice of application.

SUMMARY: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before September 15, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before September 15, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on May 18, 2016, Cody Laboratories, Inc., 601 Yellowstone Avenue, Barry Baldwin, Controlled Substances Manager, Cody, Wyoming 82414–9321 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Phenylacetone (8501)	II
Poppy Straw Concentrate (9670)	II
Tapentadol (9780)	II

The company plans to import narcotic raw materials to manufacture bulk controlled substances for distribution to its customers. The company plans to import an intermediate form of tapentadol (9780), to bulk manufacture tapentadol for distribution to its customers.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–19435 Filed 8–15–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Actavis Laboratories FL., Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before September 15, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before September 15, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 2, 2016, Actavis Laboratories FL., Inc., 4955 Orange Drive, Davie, Florida 33314 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Fentanyl (9801)	II

The company plans to import the above-listed controlled substances for clinical trials, research and analytical purposes.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–19438 Filed 8–15–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Bellwyck Clinical Services

ACTION: Notice of application.

SUMMARY: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before September 15, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before September 15, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on April 18, 2016, Bellwyck Clinical Services, 8946 Global Way, West Chester, Ohio 45069 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Methylphenidate (1724)	II
Oxycodone (9143)	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets. Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–19437 Filed 8–15–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: AMRI Rensselaer, Inc.

ACTION: Notice of application.

SUMMARY: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before September 15, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before September 15, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 27, 2016, AMRI Rensselaer, Inc., 33 Riverside Avenue, Rensselaer, New York 12144 applied to be registered as an importer of poppy straw concentrate (9670), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance to manufacture bulk controlled substance for distribution to its customers.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–19436 Filed 8–15–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Chemtos, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before October 17, 2016.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (''Deputy Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on May 5, 2016, Chemtos, LLC, 14101 W. Highway 290, Building 2000B, Austin, Texas 78737–9331 applied to be registered as a bulk manufacturer for the following basic classes of controlled substances:

Controlled Substance	Schedule
Marihuana (7360)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Etorphine HCl (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Dihydroetorphine (9334)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II

The company plans to manufacture small quantities of the listed controlled substances in bulk for distribution to its customers for use as reference standards.

Louis J. Milione,

Deputy Assistant Administrator.

[FR Doc. 2016–19449 Filed 8–15–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0086]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension and Revision of a Currently Approved Collection; Attorney Student Loan Repayment Program Electronic Forms

AGENCY: Office of Attorney Recruitment and Management, Department of Justice

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 17, 2016.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the U.S. Department of Justice, Office of Attorney Recruitment and Management, 450 5th Street NW., Suite 10200, Attn: Deana Willis, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension and revision of a currently approved collection.

2. *The Title of the Form/Collection:* Attorney Student Loan Repayment Program Electronic Forms.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None.

The Department of Justice Attorney Student Loan Repayment Program (ASLRP) is an agency recruitment and retention incentive program based on 5 U.S.C. 5379, as amended, and 5 CFR part 537. Anyone currently employed as an attorney or hired to serve in an attorney position within the Department may request consideration for the ASLRP. The Department selects new participants during an annual open season each spring and renews current beneficiaries who remain qualified for these benefits, subject to availability of funds. There are two application forms—one for new requests, and the other for renewal requests. A justification form (applicable to new requests only) and a loan continuation form complete the collection.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Department anticipates about 275 respondents annually will complete the new request form and justification form and apply for participation in the ASLRP. In addition, each year the Department expects to receive approximately 110 applications from attorneys requesting renewal of the benefits they received in previous years. It is estimated that each new request (including justification) will take two (2) hours to complete, and each renewal request approximately 20 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 586 hours, 40 minutes. It is estimated that new applicants will take 2 hours to complete the request form and justification and that current recipients requesting continued funding will take 20 minutes to complete a renewal form. The burden hours for collecting respondent data, 586 hours, 40 minutes, are calculated as follows: 275 new respondents × 2 hours = 550 hours, plus 110 renewing respondents × 20 minutes = 36 hours, 40 minutes.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: August 10, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–19446 Filed 8–15–16; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental policy, 28 U.S.C. 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Varca Ventures, Inc. and Wildcat Mining Corporation,* Civil Action No. 1:16–cv–02008–WYD, was lodged with the United States District Court for the District of Colorado on August 8, 2016.

The proposed Consent Decree concerns a complaint filed by the United States against Varca Ventures, Inc. and Wildcat Mining Corporation, pursuant to Sections 301, 309(b), and 404 of the Clean Water Act, 33 U.S.C. 1311, 1319(b), and 1344, to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States and for violation of a compliance order issued by the United States Environmental Protection Agency. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Daniel Pinkston, Senior Attorney, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, 999 18th Street, South Terrace—Suite 370, Denver, CO 80202, and refer to *United States* v. *Varca Ventures, Inc. and Wildcat Mining Corporation,* DJ #90–5–1–1–20319.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Colorado, 901 19th Street, Denver, CO 80294. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/consent-decrees.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2016–19479 Filed 8–15–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Draft Finding of No Significant Impact Sacramento Job Corps Center, 3100 Meadowview Rd., Sacramento, CA 95832 for Sacramento Regional Transit District Power Line Easement Alignment Alteration

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Notice

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, ETA, in accordance with 29 CFR 11.11(d), gives notice that the alignment alteration of a proposed easement and transmission line on the Sacramento Job Corps Center, will not have a significant adverse impact on the environment.

DATES: *Effective Date:* These findings are effective as of July 29, 2016.

FOR FURTHER INFORMATION CONTACT: William A Dakshaw, Department of Labor, 200 Constitution Avenue NW., Room N–4460, Washington, DC 20210 (202) 693–2867 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The transmission line is being relocated to the Job Corps property as part of the South Sacramento Corridor Light Rail Phase 2 Extension project. The transmission line alignment has been evaluated for environmental issues by the Sacramento Regional Transit District in Initial Study/Proposed Mitigated Negative Declaration South Sacramento Corridor Phase 2 Extension 69 kV Transmission Line and Joint Pole

Facilities Relocation Project (Initial Study) October 2013.

Since the Initial Study, the transmission alignment has been altered to run closer to the east boundary on the Sacramento Job Corps property. The changes to the alignment of the Transmission Line are not substantial, and, with the mitigation specified in the re-evaluation materials, the changes will not cause significant environmental impacts that were not previously evaluated.

The Sacramento Regional Transit District has prepared a Modification to the Sacramento Regional Transit District's South Sacramento Corridor Phase 2 Light Rail Project—69 kW Transmission Line Relocation which included a Wetlands Assessment for Proposed SMUD 69-kv Relocation (October 15, 2015) to evaluate and propose mitigation actions regarding environmental impacts.

The previously evaluated environmental impacts are:

Removal of 12 eucalyptus trees: Removal of the trees may disturb nesting Swainson's hawks which are a California State threatened species. The proposed mitigation is that tree removal work will be completed outside of nesting season which runs from February 1 to September 15th in accordance with California Department of Fish and Wildlife guidelines.

Threatened vernal pool fairy shrimp and endangered vernal pool tadpole shrimp may be present in vernal pool habitat. The proposed mitigation is to provide a 200 ft buffer between vernal pools and the transmission poles and service roadway.

The Department of Labor is a Cooperating Agency with the U.S. Federal Transit Authority on this project. The Federal Transit Administration letter of May 17, 2016 from Leslie T Rogers, Regional Administrator Region IX, FTA, to Michael R Wiley, General Manager/CEO, Sacramento Regional Transit District stated that the project was previously the subject of a Record of Decision that was issued by FTA in December, 2008 and no further Environmental Impact Statement or Environmental Assessment are necessary. The Office of Job Corps concurs that neither the preparation of a Supplemental Environmental Impact Statement nor an Environmental Assessment are necessary.

Implementation of the selected alternative will not have significant impacts on the human environment. The determination is sustained by the analysis in the Initial Study, agency consultation, and the capability of mitigations to reduce or avoid impacts. Any adverse environmental impacts that could occur are no more than minor in intensity, duration and context and less-than-significant. There are no previous, planned, or implemented actions, which in combination with the selected alternative would have significant effects on the human environment. Requirements of NEPA have been satisfied and preparation of an Environmental Impact Statement is not required. A public comment period was initiated with a notice in the Sacramento Bee on July 31, 2016. The comment period is for 30 days, ending on August 30, 2016.

Signed at Washington, DC, this 29th day of July, 2016.

Portia Wu,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2016–19111 Filed 8–15–16; 8:45 am]

BILLING CODE 4510–FT–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–045]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by September 15, 2016. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (DAA–0145–2016–0005, 1 item, 1 temporary item). Rural environmental program case files, including agreements, payment documents, contracts, and correspondence.

2. Department of the Army, Agency-wide (DAA–AU–2016–0009, 1 item, 1 temporary item). Master files of an electronic information system containing records related to parts used for equipment maintenance purposes.

3. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0002, 1 item, 1 temporary item). Records related to a force protection program including briefing documents, security reports, security plans, standard operating procedures, and related documents.

4. Department of Energy, Agency-wide (DAA–0434–2016–0008, 1 item, 1 temporary item). Master files of an electronic information system that contains records related to the ombudsman program including case file information, administrative issues raised, and services provided.

5. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0012, 26 items, 19 temporary items). Program records of the Office of Refugee Resettlement, including case files, program analysis files, regulation development files, and monitoring and periodic reports. Proposed for permanent retention are annual and special reports to Congress, Congressional testimony background materials, policy precedent files, master files of an electronic information system used to compile statistics and reports on the refugee resettlement program, guidance and instructional records, and formal program reviews.

6. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0013, 2 items, 2 temporary items). Records related to Web site content and Web site administrative policies and procedures.

7. Department of Health and Human Services, Agency for Healthcare Research and Quality (DAA–0510–2016–0001, 3 items, 3 temporary items). Administrative records of the Patient Safety Organization Program including certifications, correspondence, final reports, forms, letters, notes, and research and analysis files.

8. Department of Homeland Security, Transportation Security Administration (DAA–0560–2016–0002, 1 item, 1 temporary item). Checkpoint sign-in logs for individuals authorized for specialized screening.

9. Department of Homeland Security, Transportation Security Administration (DAA–0560–2016–0003, 1 item, 1 temporary item). Financial and administrative records relating to reimbursement for services at airports provided by local law enforcement agencies.

10. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2016–0014, 3 items, 3 temporary items). Master files of electronic information systems used to generate official form letters related to the processing of applications, petitions, and requests for immigration benefits.

11. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (DAA–0436–2016–0002, 1 item, 1 temporary item). Marking variances used to determine origin and identification of firearms.

12. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (DAA–0436–2016–0003, 2 items, 2 temporary items). Routine industry correspondence and reference correspondence files of the Office of Enforcement Programs and Services.

13. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (DAA–0436–2016–0004, 1 item, 1 temporary item). Reports prepared on examination and technical analysis of criminal evidence.

14. Department of the Navy, Agency-wide (DAA–NU–2015–0012, 15 items, 13 temporary items). Records related to civilian personnel management including training materials, personnel injury reports, personnel security files, overseas allowances, and training records. Proposed for permanent retention are policy and planning records and departmental civilian awards files.

15. Department of the Treasury, Internal Revenue Service (DAA–0058–2016–0013, 1 item, 1 temporary item). Master files of an electronic information system used to identify foreign corporate non-filers of income tax returns.

16. Department of the Treasury, Internal Revenue Service (DAA–0058–2016–0017, 1 item, 1 temporary item). Content and management records of a Web site used to facilitate internal communications.

17. General Services Administration, Agency-wide (DAA–0269–2016–0003, 5 items, 4 temporary items). Records accumulated while controlling and monitoring the resolution and implementation of external agency audit reports. Proposed for permanent retention are reports made to external agencies.

18. General Services Administration, Agency-wide (DAA–0269–2016–0004, 5 items, 2 temporary items). Investigative case files and related records of contractors or potential contractors for in regard to suspension from contracting with the Federal government. Proposed for permanent retention are estimates, justifications, and reports of the annual budget.

19. General Services Administration, Civilian Board of Contract Appeals (DAA–0269–2016–0002, 3 items, 3 temporary items). Contracting appeals and claims case files, and alternative dispute resolution records.

20. General Services Administration, Office of General Counsel (DAA–0269–2016–0001, 6 items, 4 temporary items). Program management records, litigation case files, and records relating to real property, ethics and financial disclosure, and legal assistance. Proposed for permanent retention are official opinions, significant litigation case files, and real property acquisition and ownership records.

21. National Archives and Records Administration, Government-wide (DAA–GRS–2016–0007, 2 items, 2 temporary items). General Records Schedule for phased retirement program administrative and individual case records.

22. Peace Corps, Office of Global Operations (DAA–0490–2016–0001, 7 items, 4 temporary items). Records of the Office of Overseas Programming and Training Support including routine training materials and certifications, copyright agreements, and general information on volunteer activities. Proposed for permanent retention are history files and records related to mission policy and training.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2016–19456 Filed 8–15–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA, as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Written comments should be received on or before October 17, 2016 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Troy Hillier, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, Suite 5067; Fax No. 703–519–8579; or Email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0168.

Title: Maximum Borrowing Authority, 12 CFR 741.2.

Abstract: Section 741.2 of the NCUA Rules and Regulations (12 CFR 741.2) places a maximum borrowing limitation on federally insured credit unions of 50 percent of paid-in and unimpaired capital and surplus. This limitation is statutory for federal credit unions. The collection of information requirement is for federally insured state-chartered credit unions seeking a waiver from the borrowing limit. These credit unions must submit a detailed safety and soundness analysis, a proposed aggregate amount, a letter from the state regulator approving the request and an explanation of the need for the waiver to the NCUA Regional Director. This collection of information is necessary to protect the National Credit Union Share Insurance Fund (''Fund''). The NCUA must be made aware of and be able to monitor those credit unions seeking a waiver from the maximum borrowing limitation.

Type of Review: Extension without change of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Number of Responses per Respondent: 1.

Estimated Annual Responses: 2.

Estimated Burden Hours per Response: 8.

Estimated Total Annual Burden Hours: 16.

OMB Number: 3133–0033.

Title: Security Program, 12 CFR 748.

Abstract: In accordance with Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 *et seq.*), as implemented by 12 CFR part 748, federally-insured credit unions (FICU) are required to develop and implement a written security program to safeguard sensitive member information. This information collection requires that such programs be designed to respond to incidents of unauthorized access or use, in order to prevent substantial harm or serious inconvenience to members.

Type of Review: Extension of a previously approved collection.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 6,201.

Estimated Number of Responses per Respondent: 1.02.

Estimated Annual Responses: 6,297.

Estimated Burden Hours per Response: 2.43.

Estimated Total Annual Burden Hours: 15,982.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on August 11, 2016.

Dated: August 11, 2016.

Troy S. Hillier,

NCUA PRA Clearance Officer.

[FR Doc. 2016–19501 Filed 8–15–16; 8:45 am]

BILLING CODE 7535–01–P

THE NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Public Libraries Survey FY 2016–FY 2018

ACTION: Notice, request for comments.

SUMMARY: The Institute of Museum and Library Services (''IMLS''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the continuance of the Public Libraries Survey for Fiscal Years 2016–2018. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 14, 2016.

IMLS is particularly interested in comments that help the agency to

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.* permitting electronic submissions of responses).

ADDRESSES: For a copy of the documents contact: Marisa Pelczar, Ph.D., Program Analyst, Office of Impact Assessment and Learning, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Dr. Pelczar can be reached by *Telephone:* 202–653–4647, *Fax:* 202–653–4604, *Email: mpelczar@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: Stephanie Burwell, Chief Information Officer, Office of the Chief Information Officer, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Ms. Burwell can be reached by Telephone: 202–653–4684, Fax: 202–653–4625, *Email: sburwell@imls.gov,* or by teletype (TTY/TDD at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency and is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. IMLS provides a variety of grant programs to assist the Nation's museums and libraries in improving their operations and enhancing their services to the public. IMLS is responsible for identifying national needs for and trends in museum, library, and information services; measuring and reporting on the impact and effectiveness of museum, library and information services throughout the United States, including programs conducted with funds made available by IMLS; identifying and disseminating information on the best practices of such programs; and developing plans to improve museum, library, and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks (20 U.S.C. Chapter 72, 20 U.S.C. 9108).

II. Current Actions

Pursuant to Public Law 107–279, this Public Libraries Survey collects annual descriptive data on the universe of public libraries in the United States and the Outlying Areas. Information such as public service hours per year, circulation of library books, number of librarians, population of legal service area, expenditures for library collection, programs for children and young adults, staff salary data, and access to technology, etc., would be collected. The Public Libraries Survey has been conducted by the Institute of Museum and Library Services under the clearance number 3137–0074, which expires December 31, 2016.

Agency: Institute of Museum and Library Services.

Title: Public Libraries Survey, 2016–2018.

OMB Number: 3137–0074.

Agency Number: 3137.

Affected Public: State and local governments, State library agencies, and public libraries.

Number of Respondents: 56.

Note: 56 is the number of State Library Administrative Agencies (SLAAs) that are responsible for the collection of this information and for reporting it to IMLS. In gathering this information, the SLAAs will request that their sub-entities (*i.e.,* public libraries in their respective States and Outlying Areas) provide information to the respective SLAA. As the number of sub-entities and questions varies from SLAA to SLAA, it is difficult to assess the exact number of burden hours and costs.

Frequency: Annually.

Burden hours per respondent: 91.32.

Total burden hours: 5,113.92.

Total Annualized capital/startup costs: n/a.

Total Annual Costs: $142,882.92.

Dated: August 11, 2016.

Kim A. Miller,

Grants Specialist, Office of the Chief Financial Officer.

[FR Doc. 2016–19457 Filed 8–15–16; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: STEM Expert Facilitation of Family Learning in Libraries and Museums (STEMeX)—A National Leadership Grants Special Initiative

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the *Contact* section below on or before September 11, 2016.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

ADDRESSES: Stephanie Burwell, Chief Information Officer, Office of the Chief Information Officer, Institute of

Museum and Library Services, 955 L'Enfant Plaza North SW., Suite 4000, Washington, DC 20024–2135. Mrs. Burwell can be reached by Telephone: 202–653–4684, Fax: 202–653–4625, or by email at *sburwell@imls.gov* or by teletype (TTY/TDD) at 202–653–4614. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. The Institute's mission is to inspire libraries and museums to advance innovation, learning, and civic engagement. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development. IMLS is responsible for identifying national needs for and trends in museum, library, and information services; measuring and reporting on the impact and effectiveness of museum, library and information services throughout the United States, including programs conducted with funds made available by IMLS; identifying, and disseminating information on, the best practices of such programs; and developing plans to improve museum, library, and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks (20 U.S.C. 72, 20 U.S.C. 9108).

The purpose of this survey is to administer the STEM Expert Facilitation of Family Learning in Libraries and Museums (STEMeX)—A National Leadership Grants Special Initiative. National Leadership Grants for Libraries (NLG-Libraries) and National Leadership Grants for Museums (NLG-Museums), under which this special initiative falls, support projects that address challenges faced by the library and museum fields and that have the potential to advance practice in those fields. Successful projects will generate results such as new tools, research findings, models, services, practices, or alliances that can be widely used, adapted, scaled, or replicated to extend the benefits of federal investment. This special joint NLG-Libraries and NLG-Museums initiative invites proposals for research on informal educational approaches that leverage community Science, Technology, Engineering, and Math (STEM) professionals in the broadest sense. Funded research projects will create a foundation for reaching children and families from diverse economic, social, and cultural backgrounds, with different levels of knowledge about STEM.

Current Actions: This notice proposes clearance of the STEM Expert Facilitation of Family Learning in Libraries and Museums (STEMeX)—A National Leadership Grants Special Initiative, was published in the **Federal Register** on May 25, 2016 (FR vol. 81, No. 101, pgs. 33273–33274). There were no public comments.

Agency: Institute of Museum and Library Services.

Title: STEM Expert Facilitation of Family Learning in Libraries and Museums (STEMeX)—A National Leadership Grants Special Initiative.

OMB Number: TBD.

Agency Number: 3137.

Frequency: One time.

Affected Public: Libraries, agencies, institutions of higher education, museums, and other entities that advance the museum and library fields and that meet the eligibility criteria.

Number of Respondents: 37.

Estimated Time per Respondent: 40 hours.

Total Burden Hours: 1,480.

Total Annualized Cost to Respondents: $43,805.

Total Annualized Capital/Startup Costs: 0.

Total Annualized Cost to Federal Government: $9,890.

Contact: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: August 10, 2016.

Kim A. Miller,

Grants Specialist, Office of the Chief Financial Officer.

[FR Doc. 2016–19451 Filed 8–15–16; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0161]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 19, 2016, to August 1, 2016. The last biweekly notice was published on August 2, 2016.

DATES: Comments must be filed by September 15, 2016. A request for a hearing must be filed by October 17, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0161. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0161, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0161.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *"ADAMS Public Documents"* and then select *"Begin Web-based ADAMS Search."* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0161, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 17, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission to the NRC," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a hearing request and petition to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: June 29, 2016. Publicly-available version is in ADAMS under Accession No. ML16182A171.

Description of amendment request: The amendments would revise the Technical Specifications (TSs) for PVNGS, Units 1, 2, and 3, by modifying the TS requirements to address Generic Letter (GL) 2008–01, "Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems," dated January 11, 2008 (ADAMS Accession No. ML072910759), as described in Technical Specification Task Force (TSTF) Traveler TSTF–523, Revision 2, "Generic Letter 2008–01, Managing Gas Accumulation" (ADAMS Accession No. ML13053A075).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises or adds [Surveillance Requirements (SRs)] that require verification that the [Emergency Core Cooling System (ECCS)], the [Shutdown Cooling (SDC)] System, and the [Containment Spray (CS)] System, are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. Gas accumulation in the subject systems is not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The proposed SRs ensure that the subject systems continue to be capable of performing their safety functions and are not rendered inoperable due to gas accumulation. Thus, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises or adds SRs that require verification that the ECCS, the SDC System, and the CS System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The proposed change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the proposed change does not impose any new or different requirements that could initiate an accident. The proposed change does not alter assumptions made in the safety analysis and is consistent with the safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises or adds SRs that require verification that the ECCS, the SDC System, and the CS System are not rendered inoperable due to accumulated gas and to provide allowances which permit performance of the revised verification. The proposed change adds new requirements to manage gas accumulation in order to ensure the subject systems are capable of performing their assumed safety functions. The proposed SRs are more comprehensive than the current SRs and will ensure that the assumptions of the safety analysis are protected. The proposed change does not adversely affect any current plant safety margins or the reliability of the equipment assumed in the safety analysis. Therefore, there are no changes being made to any safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Robert J. Pascarelli.

Duke Energy Florida, Inc., et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant (CR–3), Citrus County, Florida

Date of amendment request: September 22, 2015. A publicly-available version is in ADAMS under Accession No. ML15265A590.

Description of amendment request: The amendment would reflect the name change from Duke Energy Florida, Inc., to Duke Energy Florida, LLC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a significant increase in the probability of any accident previously evaluated because no accident initiators or assumptions are affected. The proposed license transfer and name change is administrative in nature and has no direct effect on any plant system, plant personnel qualifications, or the operation and maintenance of CR–3.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. The proposed license transfer and name change is administrative in nature and has no direct effect on any plant system, plant personnel qualifications, or operation and maintenance of CR–3.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not involve a significant reduction in a margin of safety because the proposed change does not involve changes to the initial conditions contributing to accident severity or consequences, or reduce response or mitigation capabilities. The proposed license transfer and name change is administrative in nature and has no direct effect on any plant system, plant personnel qualifications, or operation and maintenance of CR–3.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, 550 South Tryon Street, Charlotte NC 28202.

NRC Branch Chief: Bruce A. Watson.

Duke Energy Progress, Inc., Docket Nos. 50–325 and 50–324; Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Duke Energy Progress, Inc., Docket No. 50–400; Shearon Harris Nuclear Power Plant, Unit 1, Wake County, North Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Duke Energy Progress, Inc., Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: June 23, 2016. A publicly-available version is in ADAMS under Accession No. ML16175A292.

Description of amendment request: The amendments would modify the Technical Specification (TS) requirements for unavailable barriers by adding Limiting Condition for Operation (LCO) 3.0.9 to the TSs for the Brunswick Steam Electric Plant, Oconee Nuclear Station, and H.B. Robinson Steam Electric Plant. The same changes are added as LCO 3.0.10 to the TSs for the Catawba Nuclear Station and McGuire Nuclear Station. For the Shearon Harris Nuclear Power Plant, the proposed amendment would modify TS requirements for unavailable barriers by adding LCO 3.0.6 to the TSs. The proposed changes are consistent with Technical Specification Task Force (TSTF) Traveler TSTF–427, Revision 2, "Allowance for Non-Technical Specification Barrier Degradation on Supported System OPERABILITY," subject to stated variations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable barrier if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on the allowance provided by proposed LCO 3.0.9 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.9. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to an unavailable barrier, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns.

Therefore, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG [Regulatory Guide] 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of

LCO 3.0.9 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant as indicated by the anticipated low levels of associated risk (ICCDP [incremental conditional core damage probability] and ICLERP [incremental conditional large early release probability]) as shown in Table 1 of Section 3.1.1 in the Safety Evaluation.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Kate B. Nolan, Deputy General Counsel, Duke Energy Carolinas, LLC, 550 South Tyron Street, Mail Code DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Michael T. Markley.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 17, 2016. A publicly-available version is in ADAMS under Accession No. ML16172A010.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) by adding a note permitting one low-pressure coolant injection (LPCI) subsystem of residual heat removal (RHR) to be considered OPERABLE in Operating Conditions (OPCONs) 4 and 5 during alignment and operation for decay heat removal, if capable of being manually realigned and not otherwise inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There are no physical changes being made to the plant. The LPCI mode of RHR is an automatic ECCS [emergency core cooling system] function during OPCONs 4 and 5. LPCI mode is used in accident conditions to provide cooling and mitigate accident conditions. The proposed note would allow one LPCI subsystem to be considered operable during alignment and operation for decay heat removal if capable of being manually realigned and not otherwise inoperable. The required number of operable ECCS subsystems in OPCONs 4 and 5 would not be reduced from the current requirement. Considering one LPCI subsystem as operable when aligned for SDC [shutdown cooling] does not increase the probability or consequences of an accident. Although it will take longer to realign manually from SDC to LPCI in the event of a drain-down event or accident, with the lower heat loads and temperatures in OPCONs 4 and 5, the operator will have sufficient margin to perform the realignment in the event of a draindown event prior to core uncovery.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The LPCI mode of RHR is an accident mitigator, not an initiator. This change will not reduce the number of required ECCS subsystems during OPCONs 4 and 5. The change will permit the operability of one LPCI subsystem while the components of that subsystem are aligned and operating in the Shutdown Cooling mode of RHR. The change does not alter current methods of plant operation nor does the change make a physical change to plant equipment resulting in an unanalyzed malfunction of equipment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change, which adds a note which will allow one LPCI subsystem to be considered operable during alignment and operation for decay heat removal if capable of being manually realigned and not otherwise inoperable, does not exceed or alter a setpoint, design basis or safety limit.

The basis of TS section 3.5.2 is to ensure sufficient ECCS capacity to maintain core cooling in OPCONs 4 and 5. This proposed change does not affect the required number of ECCS subsystems during OPCONs 4 and 5; therefore adequate capability through subsystem redundancy is maintained. The amount of time required to obtain rated LPCI conditions is increased due to the manual realignment, from the Main Control Room, of the suction valves and restart of the RHR pump following LPCI injection conditions. However, this change will not result in any design or regulatory limit being exceeded with respect to the safety analyses documented in the UFSAR [updated final safety analysis report] and is consistent with NUREG–1433.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Douglas A. Broaddus.

South Carolina Electric and Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: June 28, 2016. A publicly-available version is in ADAMS under Accession No. ML16181A097.

Description of amendment request: The proposed changes, if approved for the VCSNS, involve departures from incorporated plant-specific Tier 2 and Tier 2* Updated Final Safety Analysis Report (UFSAR) information and conforming changes to the combined license Appendix C, in order to make changes to the design of certain components of the auxiliary building roof reinforcement and roof girders, and other related changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the auxiliary building roof are to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located in the auxiliary building. The auxiliary building is a seismic Category I structure and is designed for dead, live, thermal, pressure, safe shutdown earthquake loads, and loads due to postulated pipe breaks. The auxiliary building roof is designed for snow, wind, and tornado loads and postulated external missiles. The proposed changes to UFSAR descriptions and figures are intended to address changes in the detail design of the auxiliary building roof. The thickness and strength of the auxiliary building roof are not reduced. As a result, the design function of the auxiliary building structure is not adversely affected by the proposed changes. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor do the changes described create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to UFSAR descriptions and figures are proposed to address changes in the detail design of the auxiliary building roof. The thickness, geometry, and strength of the structures are not adversely altered. The concrete and reinforcement materials are not altered. The properties of the concrete are not altered. The changes to the design details of the auxiliary building structure do not create any new accident precursors. As a result, the design function of the auxiliary building structure is not adversely affected by the proposed changes.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The criteria and requirements of American Concrete Institute (ACI) 349 and American Institute of Steel Construction (AISC) N690 provide a margin of safety to structural failure. The design of the auxiliary building structure conforms to applicable criteria and requirements in ACI 349 and AISC N690 and therefore maintains the margin of safety. The proposed changes to the UFSAR address changes in the detail design of the auxiliary building roof. There is no change to design requirements of the auxiliary building structure. There is no change to the method of evaluation from that used in the design basis calculations. There is not a significant change to the in structure response spectra. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus no margin of safety is reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety previously evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Acting Branch Chief: Jennifer Dixon-Herrity.

South Carolina Electric & Gas Company and South Carolina Public Service Authority, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: July 11, 2016. A publicly-available version is in ADAMS under Accession No. ML16193A488.

Description of amendment request: The amendment request proposes changes to the Combined Licenses (COL) Appendix A Technical Specifications (TS) and Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2 information. Specifically, the proposed departures consist of changes to the UFSAR adding compensation for changes in reactor coolant density using the "delta T" power signal, to the reactor coolant flow input signal for the low reactor coolant flow trip function of the Reactor Trip System (RTS). Additionally, TS Surveillance Requirement (SR) 3.3.1.3 is added to the surveillances required for the Reactor Coolant Flow-Low reactor trip in TS Table 3.3.1–1, Function 7.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds compensation, for changes in reactor coolant density using the [delta T] power signal, to the reactor coolant flow input signal for the low reactor coolant flow reactor trip function of the RTS. The proposed change also adds TS SR 3.3.1.3 to the surveillances required for the Reactor Coolant Flow-Low reactor trip specified in TS Table 3.3.1–1. SR 3.3.1.3 compares the calorimetric heat balance to the calculated [delta T] power in each Protection and Safety Monitoring System (PMS) division every 24 hours to assure acceptable [delta T] power calibration. As such, the surveillance is also required to support operability of the Reactor Coolant Flow-Low trip function. This change to the low reactor coolant flow trip input signal assures that the reactor will trip on low reactor coolant flow when the requisite conditions are met, and minimize spurious reactor trips and the accompanying plant transients. The change to the COL Appendix A Table 3.3.1–1 aligns the surveillance of the Reactor Coolant Flow-Low trip with the addition of the compensation, for changes in reactor coolant density using [delta T] power to the flow input signal to the trip. These changes do not affect the operation of any systems or equipment that initiate an analyzed accident or alter any structures, systems, and components (SSC) accident initiator or initiating sequence of events.

These changes have no adverse impact on the support, design, or operation of mechanical and fluid systems. The response of systems to postulated accident conditions is not adversely affected and remains within response time assumed in the accident analysis. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. Consequently, the plant response to previously evaluated accidents or external events is not adversely affected, nor does the proposed change create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed change adds compensation, for changes in reactor coolant density using [delta T] power signal, to the reactor coolant flow input signal to the low reactor coolant flow reactor trip function of the RTS. The proposed change also adds TS SR 3.3.1.3 to the surveillances required for the Reactor Coolant Flow-Low reactor trip specified in TS Table 3.3.1–1. SR 3.3.1.3 compares the calorimetric heat balance to the calculated [delta T] power in each PMS division every 24 hours to assure acceptable [delta T] power calibration. As such, the surveillance is also required to support operability of the Reactor Coolant Flow-Low trip function. The proposed change to the low reactor coolant flow reactor trip input signal does not alter the design function of the low flow reactor trip. The change to the COL Appendix A Table 3.3.1–1 aligns the surveillance of the Reactor Coolant Flow-Low trip with the addition of compensation, for changes in reactor coolant density using [delta T] power to the flow input signal to the trip. Consequently, because the low reactor coolant flow trip functions are unchanged, there are no adverse effects that could create the possibility of a new or different kind of accident from any previously evaluated in the UFSAR.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds compensation, for changes in reactor coolant density using [delta T] power signal, to the reactor coolant flow input signal for the low reactor coolant flow trip function of the RTS. The proposed change also adds TS SR 3.3.1.3 to the surveillances required for the Reactor Coolant Flow-Low reactor trip specified in TS Table 3.3.1–1. SR 3.3.1.3 compares the calorimetric heat balance to the calculated [delta T] power in each PMS division every 24 hours to assure acceptable [delta T] power calibration. As such, the surveillance is also required to support operability of the Reactor Coolant Flow-Low trip function. The proposed changes do not alter any applicable design codes, code compliance, design function, or safety analysis. Consequently, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed change, thus the margin of safety is not reduced.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW., Washington, DC 20004–2514.

NRC Acting Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: March 11, 2016, as revised on July 12, 2016. A publicly-available version is in ADAMS under Accession Nos. ML16071A404 and ML16196A099, respectively.

Description of amendment request: The requested amendment proposes to depart from approved AP1000 Design Control Document (DCD) Tier 2* and associated Tier 2 information in the Updated Final Safety Analysis Report (UFSAR) (which includes the plant-specific DCD Tier 2 information). Specifically, the requested amendment proposes to depart from UFSAR text and figures that describe the connections between floor modules and structural wall modules in the containment internal structures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design functions of the nuclear island structures are to provide support, protection, and separation for the seismic Category I mechanical and electrical equipment located in the nuclear island. The nuclear island structures are structurally designed to meet seismic Category I requirements as defined in Regulatory Guide 1.29.

The change of the design details for the floor modules and the connections between floor modules and the structural wall modules, and the change to more clearly state the design requirement that these connections meet criteria and requirements of American Concrete Institute (ACI) 349 and American Institute of Steel Construction (AISC) N690, do not have an adverse impact on the response of the nuclear island structures to safe shutdown earthquake ground motions or loads due to anticipated transients or postulated accident conditions. The change of the design details for the connections between floor modules and the structural wall modules, and the clarification of design requirements for these connections, do not impact the support, design, or operation of mechanical and fluid systems. There is no change to plant systems or the response of systems to postulated accident conditions. There is no change to the predicted radioactive releases due to normal operation or postulated accident conditions. The plant response to previously evaluated accidents or external events is not adversely affected, nor does the change described create any new accident precursors.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is to revise design details for the floor modules and the connections between floor modules and the structural wall modules, and more clearly state the design requirement that these connections meet criteria and requirements of ACI 349 and AISC N690. The clarification and changes to the design details for the floor modules and the connections between floor modules and the structural wall modules do not change the design requirements of the nuclear island structures. The clarification and changes of the design details for the floor modules and the connections between floor modules and the structural wall modules do not change the design function, support, design, or operation of mechanical and fluid systems. The clarification and changes of the design details for the floor modules and the connections between floor modules and the structural wall modules do not result in a new failure mechanism for the nuclear island structures or new accident precursors. As a result, the design function of the nuclear island structures is not adversely affected by the proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes, thus, no margin of safety is reduced. The acceptance limits for the design of seismic Category I structures are included in the codes and standards used for the design, analysis, and construction of the structures. The two primary codes for the seismic Category I structures are American Institute of Steel Construction (AISC) N690 and American Concrete Institute (ACI) 349. These codes provide a margin of safety to structural failure. The changes to the design of the connection of the floor module to the structural wall modules in the containment internal structures satisfy applicable provisions of AISC N690 and ACI 349 and supplemental requirements included in the UFSAR, and therefore maintain the margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Acting Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: June 16, 2016. A publicly-available version is in ADAMS under Accession No. ML16168A399.

Description of amendment request: The amendment request proposes changes to the Technical Specification and Updated Final Safety Analysis Report (UFSAR) Tier 2 information to update the Protection and Safety Monitoring System (PMS) to align with the requirements in Institute of Electrical and Electronics Engineers (IEEE) 603–1991, "IEEE Standard Criteria for Safety Systems for Nuclear Power Generating Stations." IEEE 603–1991, Clause 6.6, "Operating Bypasses," imposes requirements on the operating bypasses (*i.e.,* "blocks" and "resets") used for the AP1000 PMS. The PMS functional logic for blocking the source range neutron flux doubling signal shown in UFSAR Figure 7.2–1 (Sheet 3) requires revision to fully comply with this requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff's edits in square brackets:

1. Does the proposed amendment involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The proposed change modifies the PMS logic used to terminate an inadvertent boron dilution accident which results in a source range flux doubling signal. An inadvertent boron dilution is caused by the failure of the demineralized water transfer and storage system or chemical and volume control system, either by controller, operator or mechanical failure. The proposed changes to PMS and Technical Specification requirements do not adversely affect any of these accident initiators or introduce any component failures that could lead to a boron dilution event; thus the probabilities of accidents previously evaluated are not affected. The proposed changes do not adversely interface with or adversely affect any system containing radioactivity or affect any radiological material release source term; thus the radiological releases in an accident are not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The accident analysis evaluates events involving a decrease in reactor coolant system boron concentration due to a malfunction of the chemical and volume control system in Modes 1 through 6. The Technical Specifications currently provide administrative controls to prevent a boron dilution event in Mode 6. The proposed change would provide additional PMS interlocks and administrative controls for prevention of a boron dilution event applicable in Modes 2, 3, 4, and 5. The proposed changes to the PMS design do not adversely affect the design or operation of safety related equipment or equipment whose failure could initiate an accident from what is already described in the licensing basis. These changes do not adversely affect fission product barriers. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change would add additional restrictions on the source range flux doubling signal operational bypass to align it with the requirements in IEEE 603 and provide assurance that the protection logic is enabled whenever the plant is in a condition where protection might be required. These changes to the PMS design do not adversely impact nor affect the design, construction, or operation of any plant [structure, system, and components (SSCs)], including any equipment whose failure could initiate an accident or a failure of a fission product barrier. No analysis is adversely affected by the proposed changes. Furthermore, no system function, design function, or equipment qualification will be adversely affected by the changes.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Acting Branch Chief: Jennifer Dixon-Herrity.

Wolf Creek Nuclear Operating Corporation (WCNOC), Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 14, 2016. A publicly-available version is in ADAMS under Accession No. ML16174A121.

Description of amendment request: The amendment would revise the Cyber Security Plan Implementation Milestone No. 8 completion date and the physical protection license condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the WCNOC Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components (SSCs) relied upon to mitigate the consequences of postulated accidents, and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the WCNOC Cyber Security Plan Implementation Schedule is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the SSCs relied upon to mitigate the consequences of postulated accidents, and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change to the WCNOC Cyber Security Plan Implementation Schedule is administrative in nature. Since the proposed change is administrative in nature, there are no changes to these established safety margins.

Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037.

NRC Branch Chief: Robert J. Pascarelli.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit No. 2 (MPS2) and Unit No. 3 (MPS3), New London County, Connecticut

Date of amendment request: June 30, 2015, as supplemented by letters dated February 25 and June 29, 2016.

Brief description of amendment: The amendments revised the MPS2 and MPS3 licensing basis by deleting the information in the final safety analysis reports pertaining to the severe line outage detection special protection system, updating the description of the tower structures associated with the four offsite transmission lines feeding Millstone Power Station (MPS), and describing how the current offsite power source configuration and design satisfies the requirements of General Design Criteria (GDC) 17, ''Electric Power Systems,'' and GDC 5, ''Sharing of Structures, Systems, and Components.'' A new technical requirements manual (TRM) section, ''Offsite Line Power Sources,'' was added to the MPS2 and MPS3 TRM supporting the licensing basis change. Specifically, with one offsite transmission line nonfunctional, the TRM requirement would allow 72 hours to restore the nonfunctional line with a provision to allow up to 7 days (for Lines 310, 348, and 383) or up to 14 days (for Line 371/364) if specific TRM action requirements are met.

Date of issuance: July 28, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 328 and 269. A publicly-available version is in ADAMS under Accession No. ML16193A001; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–65 and NPF–49: Amendments revised the Renewed Operating Licenses.

*Date of initial notice in **Federal Register**:* October 13, 2015 (80 FR 61478). The supplemental letters dated February 25 and June 29, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 28, 2016.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3 (MPS3), New London County, Connecticut

Date of amendment request: May 8, 2015, as supplemented by letters dated January 28, February 25, March 23, March 29, and May 2, 2016.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to (1) allow the use of Dominion nuclear safety and reload core design methods; (2) allow the use of applicable departure from nucleate boiling ratio design limits for VIPRE–D; (3) update the approved reference methodologies cited in TS 6.9.1.6.b; (4) remove the base load mode of operation that is not a feature of the Dominion Relaxed Power Distribution Control power distribution control methodology; and (5) address the issues identified in Westinghouse Nuclear Safety Advisory Letter (NSAL–09–5), Rev. 1, NSAL–15–1, and Westinghouse Communication 06–IC–03. Additionally, the amendment relocates certain equations, supporting descriptions and surveillance requirements from the TSs to licensee-controlled documents.

Date of issuance: July 28, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment No.: 268. A publicly-available version is in ADAMS under Accession No. ML16131A728; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–65: Amendment revised the Renewed Operating License and TSs.

*Date of initial notice in **Federal Register**:* September 1, 2015 (80 FR 52804). The supplemental letters dated January 28, February 25, March 23, March 29, and May 2, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. A subsequent notice was published in the **Federal Register** on June 13, 2016 (81 FR 38226), to include the added clarification that the proposed amendment changes involve the relocation of TS information either to the TS Bases or the Core Operating Limits Report which are both licensee-controlled documents. There were no changes to the no significant hazards consideration determination as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 2016.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina; Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina; and Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: July 15, 2015, as supplemented by letter dated February 1, 2016.

Brief description of amendments: The amendments revised the facilities' Updated Final Safety Analysis Reports (UFSARs) to provide gap release fractions for high-burnup fuel rods that exceed the linear heat generation rate limit detailed in Table 3, Footnote 11, of Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' July 2000 (ADAMS Accession No. ML003716792).

Date of issuance: July 19, 2016.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 285 (Unit 1) and 281 (Unit 2), for the Catawba Nuclear Station; 289 (Unit 1) and 268 (Unit 2), for the McGuire Nuclear Station; and 401 (Unit 1), 403 (Unit 2), and 402 (Unit 3), for the Oconee Nuclear Station. A publicly-available version is in ADAMS under Accession No. ML16159A336; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–35 and NPF–52, for the Catawba Nuclear Station Units 1 and 2; NPF–9 and NPF–17, for the McGuire Nuclear Station, Units 1 and 2; and DPR–38, DPR–47, DPR–55, for the Oconee Nuclear Station, Units 1, 2, and 3: The amendments revised the facilities as described in the UFSARs.

*Date of initial notice in **Federal Register**:* October 13, 2015 (80 FR 61480). The supplemental letter dated February 1, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 2016.

No significant hazards consideration comments received: No.

Duke Energy Progress, Inc., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: December 17, 2015, as supplemented by letters dated April 25, 2016, and June 8, 2016.

Brief description of amendment: The amendment revised the as-found lift setting tolerance for main steam line code safety valves, revised the nominal reactor trip setpoint on pressurizer water level, and revised pressurizer water level span in the Technical Specifications (TSs).

Date of issuance: July 25, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance. The updated final safety analysis report (UFSAR) changes shall be implemented in the next periodic update to the UFSAR in accordance with 10 CFR 50.71(e).

Amendment No.: A publicly-available version is in ADAMS under Accession No. ML16155A124; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–63: Amendment revised the Renewed Facility Operating License and TSs.

*Date of initial notice in **Federal Register**:* April 5, 2016 (81 FR 19646). The supplemental letters dated April 25 and June 8, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2016.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: June 17, 2015, as supplemented by letters dated March 3, April 28, and July 12, 2016.

Brief description of amendment: The amendment modified the Waterford 3 Technical Specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program. The amendment is in compliance with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b.

Date of issuance: July 26, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 249. A publicly-available version is in ADAMS under Accession No. ML16159A419; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and TSs.

*Date of initial notice in **Federal Register**:* September 1, 2015 (80 FR 52805). The supplements dated March 3, April 28, and July 12, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 26, 2016.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendment: August 19, 2014, as supplemented by letters dated January 20, March 31, April 30, August 24, October 9, October 30, November 9, and December 16, 2015, and February 12 and April 29, 2016.

Brief description of amendment: The amendment raised the Technical Specification (TS) temperature limit of the cooling water supplied to the plant from the ultimate heat sink from less than or equal to (≤) 100 degrees Fahrenheit (°F) to ≤ 102 °F.

Date of issuance: July 26, 2016.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit No. 1–189; Unit No. 2–189. A publicly-available version is in ADAMS under Accession No. ML16133A438; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–72 and NPF–77: The amendment revised the License and TSs.

*Date of initial notice in **Federal Register**:* March 31, 2015 (80 FR 17088). The supplements contained clarifying information, did not change the scope of the requested change, and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 26, 2016.

No significant hazards consideration comments received: No.

Florida Power & Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: July 14, 2015, as supplemented by letters dated January 21 and July 15, 2016.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) by removing Surveillance Requirement (SR) 4.8.1.1.2.g.1 related to draining each fuel oil storage tank, removing the accumulated sediment, and cleaning the tank. The amendments require the licensee to place the content of the SR in the Updated Final Safety Analysis Report to be controlled in accordance with 10 CFR 50.59, "Changes, tests, and experiments."

Date of issuance: July 28, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 233 and 183. A publicly-available version is in ADAMS under Accession No. ML16103A397; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register**:* September 29, 2015 (80 FR 58518). The supplemental letters dated January 21, and July 15, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated July 28, 2016.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station (CNS), Nemaha County, Nebraska

Date of amendment request: August 6, 2015, as supplemented by letter dated March 17, 2016.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to relocate the reactor coolant system (RCS) pressure-temperature (P–T) limits from the TS limiting condition for operation to a new licensee-controlled document—the Pressure and Temperature Limits Report. The actual RCS P–T limit curves, as currently established in the CNS TS, and all associated parameters, which are valid through 32 effective full power years of facility operation, are not affected by the TS amendment.

Date of issuance: July 25, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 256. A publicly-available version is in ADAMS under Accession No. ML16158A022; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–46: The amendment revised the Facility Operating License and TSs.

*Date of initial notice in **Federal Register**:* November 3, 2015 (80 FR 67802). The supplemental letter dated March 17, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation July 25, 2016.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 11, 2016.

Brief description of amendment: The amendment revised Technical Specification (TS) 1.1, "Definitions, Shutdown Margin (SDM)" consistent with the proposed changes in Technical Specification Task Force (TSTF) Change Traveler, TSTF–535, Revision 0, "Revise Shutdown Margin [SDM] Definition to Address Advanced Fuel Designs." Prior to the amendment, the plant's SDM (*i.e.,* the amount of reactivity by which the reactor is subcritical) was calculated using a shutdown moderator temperature of 68 degrees Fahrenheit (°F). This value was conservative for standard fuel designs. However, new, advanced boiling-water reactor fuel designs can have a higher reactivity at moderator shutdown temperatures above 68 °F. Therefore, the amendment implemented TSTF–535, Revision 0, which modified the TSs to require the SDM to be calculated at whatever moderator temperature produces the maximum reactivity with moderator temperature greater than or equal to 68 °F.

Date of issuance: July 25, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 254. A publicly-available version is in ADAMS under Accession No. ML16119A433; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–46: The amendment revised the Facility Operating License and TSs.

*Date of initial notice in **Federal Register**:* April 12, 2016 (81 FR 21600).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2016.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 8, 2015, as supplemented by letter dated June 13, 2016.

Brief description of amendment: The amendment replaced Technical Specification (TS) Figure 4.1–1, "Site and Exclusion Area Boundaries and Low Population Zone," with a text description of the site in TS 4.1, "Site Location." In addition, typographical errors were corrected in Section 1.1, "Definitions."

Date of issuance: July 25, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 255. A publicly-available version is in ADAMS under Accession No. ML16146A749; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–46: The amendment revised the Facility Operating License and TSs.

*Date of initial notice in **Federal Register**:* November 10, 2015 (80 FR 69712). The supplemental letter dated June 13, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2016.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: July 30, 2015.

Brief description of amendment: The amendment revised Technical Specification (TS) Sections 1.1, "Definitions," 3.4.9, "[Reactor Coolant System (RCS)] Pressure and Temperature (P/T) Limits," and 5.6, "Reporting Requirements," by replacing the existing reactor vessel heatup and cooldown rate limits and the P/T limit curves with references to a P/T Limits Report (PTLR).

Date of issuance: July 25, 2016.

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 294. A publicly-available version is in ADAMS under Accession No. ML16180A086; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–49: The amendment revised the Operating License and TSs.

*Date of initial notice in **Federal Register**:* December 8, 2015 (80 FR 76328). The supplemental by letters dated December 18, 2015, and February 19, March 11, and March 30, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2016.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: September 2, 2015.

Brief description of amendment: The amendment revised Technical Specification (TS) Surveillance Requirement 3.5.1.3.b to require verification that the MNGP alternate nitrogen system required pressure be greater than or equal to 1060 psig [pounds per square inch gauge] instead of greater than or equal to 410 psig as previously stated.

Date of issuance: August 1, 2016.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 190. A publicly-available version is in ADAMS under Accession No. ML16196A303; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–22. Amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in ***Federal Register****:* October 13, 2015 (80 FR 61483).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 1, 2016.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant, Unit 2, Rhea County, Tennessee

Date of amendment request: December 31, 2015.

Brief description of amendment: The amendment revised the license to permit use of the Fuel Rod Performance and Design 4 Thermal Conductivity Degradation (PAD4TCD) computer program for the second cycle of plant operation.

Date of issuance: July 25, 2016.

Effective date: As of the date of issuance and shall be implemented within 14 days of issuance.

Amendment No.: 1. A publicly-available version is in ADAMS under Accession No. ML16174A354; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF–96: Amendment revised the Facility Operating License.

Date of initial notice in ***Federal Register****:* March 1, 2016 (81 FR 10682).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2016.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 3rd day of August, 2016.

For the Nuclear Regulatory Commission.

Anne T. Boland,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–19213 Filed 8–15–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATES: August 15, 22, 29, September 5, 12, 19, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 15, 2016

There are no meetings scheduled for the week of August 15, 2016.

Week of August 22, 2016—Tentative

There are no meetings scheduled for the week of August 22, 2016.

Week of August 29, 2016—Tentative

There are no meetings scheduled for the week of August 29, 2016.

Week of September 5, 2016—Tentative

There are no meetings scheduled for the week of September 5, 2016.

Week of September 12, 2016—Tentative

Monday, September 12, 2016

1:30 p.m. NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Tuesday, September 13, 2016

2:00 p.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9).

Friday, September 16, 2016

9:00 a.m. Briefing on Fee Process (Public Meeting), (Contact: Michele Kaplan: 301–415–5256).

This meeting will be webcast live at the Web address *http://www.nrc.gov/.*

Week of September 19, 2016—Tentative

Monday, September 19, 2016

9:00 a.m. Briefing on NRC Tribal Policy Statement (Public Meeting) (Contact: Michelle Ryan: 630–829–9724).

This meeting will be webcast live at the Web address *http://www.nrc.gov/.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: August 10, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–19557 Filed 8–12–16; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–018 and 52–019; NRC–2008–0170]

Duke Energy Carolinas, LLC; William States Lee III Nuclear Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license application; hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will convene an evidentiary session to receive testimony and exhibits in the uncontested portion of this proceeding regarding the application of Duke Energy Carolinas, LLC (DEC) for combined licenses (COLs) to construct and operate two units (Units 1 and 2) in Cherokee County, South Carolina. This mandatory hearing will concern safety and environmental matters relating to the requested COLs.

DATES: The hearing will be held on October 5, 2016, beginning at 9:00 a.m. Eastern Daylight Time. For the schedule for submitting pre-filed documents and deadlines affecting Interested Government Participants, see Section VI of the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID 52–018 and 52–019 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *NRC's Electronic Hearing Docket:* You may obtain publicly available documents related to this hearing online at *http://www.nrc.gov/about-nrc/regulatory/adjudicatory.html.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Denise McGovern, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0681; email: *Denise.McGovern@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission hereby gives notice that, pursuant to Section 189a of the Atomic Energy Act of 1954, as amended (the Act), it will convene an evidentiary session to receive testimony and exhibits in the uncontested portion of this proceeding regarding DEC's December 12, 2007, application for COLs under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), to construct and operate two new units (Units 1 and 2) in Cherokee County, South Carolina (*http://www.nrc.gov/reactors/new-reactors/col/lee/documents.html#application).* This mandatory hearing will concern safety and environmental matters relating to the requested COLs, as more fully described below. Participants in the hearing are not to address any contested issues in their written filings or oral presentations.

II. Evidentiary Uncontested Hearing

The Commission will conduct this hearing beginning at 9:00 a.m., Eastern Daylight Time on October 5, 2016, at the Commission's headquarters in Rockville, Maryland. The hearing on these issues will continue on subsequent days, if necessary.

III. Presiding Officer

The Commission is the presiding officer for this proceeding.

IV. Matters To Be Considered

The matter at issue in this proceeding is whether the review of the application by the Commission's staff has been adequate to support the findings found in 10 CFR 52.97 and 10 CFR 51.107. Those findings that must be made for each COL are as follows:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

The Commission will determine whether (1) the applicable standards and requirements of the Act and the Commission's regulations have been met; (2) any required notifications to other agencies or bodies have been duly made; (3) there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations; (4) the applicant is technically and financially qualified to engage in the activities authorized; and (5) issuance of the license will not be inimical to the common defense and security or the health and safety of the public.

Issues Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended

The Commission will (1) determine whether the requirements of Sections 102(2) (A), (C), and (E) of NEPA and the applicable regulations in 10 CFR part 51 have been met; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined licenses should be issued, denied, or appropriately conditioned to protect environmental values; and (4) determine whether the NEPA review conducted by the NRC staff has been adequate.

V. Schedule for Submittal of Pre-Filed Documents

No later than September 14, 2016, unless the Commission directs otherwise, the staff and the applicant each shall submit a list of its anticipated witnesses for the hearing.

No later than September 14, 2016, unless the Commission directs otherwise, the applicant shall submit its pre-filed written testimony. The staff previously submitted its testimony on August 8, 2016.

The Commission may issue written questions to the applicant or the staff before the hearing. If such questions are issued, an order containing such questions will be issued no later than September 1, 2016. Responses to such questions are due September 14, 2016, unless the Commission directs otherwise.

VI. Interested Government Participants

No later than August 25, 2016, any interested State, local government body, or Federally recognized Indian Tribe may file with the Commission a statement of any issues or questions to which the State, local government body, or Indian Tribe wishes the Commission to give particular attention as part of the uncontested hearing process. Such statement may be accompanied by any supporting documentation that the State, local government body, or Indian Tribe sees fit to provide. Any statements and supporting documentation (if any) received by the Commission using the agency's E-filing system[1] by the

---

[1] The process for accessing and using the agency's E-filing system is described in the April 28, 2008, notice of hearing that was issued by the Commission for this proceeding. See Duke Energy; Notice of Hearing and Opportunity To Petition for Leave to Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation on a Combined License for the William States Lee III Units 1 and 2, 73 FR 22978. Participants who are unable to use the

Continued

deadline indicated above will be made part of the record of the proceeding. The Commission will use such statements and documents as appropriate to inform its pre-hearing questions to the Staff and applicant, its inquiries at the oral hearing and its decision following the hearing. The Commission may also request, prior to September 21, 2016, that one or more particular States, local government bodies, or Indian Tribes send one representative each to the evidentiary hearing to answer Commission questions and/or make a statement for the purpose of assisting the Commission's exploration of one or more of the issues raised by the State, local government body, or Indian Tribe in the pre-hearing filings described above. The decision whether to request the presence of a representative of a State, local government body, or Indian Tribe at the evidentiary hearing to make a statement and/or answer Commission questions is solely at the Commission's discretion. The Commission's request will specify the issue or issues that the representative should be prepared to address.

States, local governments, or Indian Tribes should be aware that this evidentiary hearing is separate and distinct from the NRC's contested hearing process. Issues within the scope of contentions that have been admitted or contested issues pending before the Atomic Safety and Licensing Board or the Commission in a contested proceeding for a COL application are outside the scope of the uncontested proceeding for that COL application. In addition, although States, local governments, or Indian Tribes participating as described above may take any position they wish, or no position at all, with respect to issues regarding the COL application or the NRC staff's associated environmental review that do fall within the scope of the uncontested proceeding (*i.e.,* issues that are not within the scope of admitted contentions or pending contested issues), they should be aware that many of the procedures and rights applicable to the NRC's contested hearing process due to the inherently adversarial nature of such proceedings are not available with respect to this uncontested hearing. Participation in the NRC's contested hearing process is governed by 10 CFR 2.309 (for persons or entities, including States, local governments, or Indian Tribes, seeking to file contentions of their own) and 10 CFR 2.315(c) (for interested States, local governments, and Indian Tribes seeking to participate with respect to contentions filed by others). Participation in this uncontested hearing does not affect the right of a State, local government, or Indian Tribe to participate in the separate contested hearing process.

Dated at Rockville, Maryland, this 10th day of August, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2016–19526 Filed 8–15–16; 8:45 am]

BILLING CODE 7590–01–P

---

electronic information exchange (EIE), or who will have difficulty complying with EIE requirements in the time frame provided for submission of written statements, may provide their statements by electronic mail to *hearingdocket@nrc.gov.*

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 18, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Chair White, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters;

Opinion; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: August 11, 2016.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2016–19590 Filed 8–12–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78536; File No. SR–BatsEDGA–2016–18]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Logical Port Fees

August 10, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2016, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to EDGA Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to modify the billing policy for the logical port fees. The Exchange currently charges for logical ports (including Multicast PITCH Spin Server and GRP ports) $500 per port per month. A logical port represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-Member and grants that Member or non-Member the ability to operate a specific application, such as FIX order entry or PITCH data receipt. The Exchange's Multicast PITCH data feed is available from two primary feeds, identified as the "A feed" and the "C feed", which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant feeds, identified as the "B feed" and the "D feed". Logical port fees are limited to logical ports in the Exchange's primary data center and no logical port fees are assessed for redundant secondary data center ports. The Exchange assesses the monthly per logical port fees to all Member's and non-Member's logical ports.

The Exchange proposes to clarify within its fee schedule how monthly fees for logical ports may be pro-rated. As proposed, new requests will be pro-rated for the first month of service. Cancellation requests are billed in full month increments as firms are required to pay for the service for the remainder of the month, unless the session is terminated within the first month of service.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule on August 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The proposed rule change seeks to provide clarity to subscribers regarding the Exchange's pro-rata billing policy for logical ports by describing how logical port fees may be pro-rated for a new request and upon cancellation. The Exchange believes that the proposed pro-rata billing of fees for logical ports is reasonable in that it is similar to how port fees are pro-rated by the Nasdaq Stock Market LLC ("Nasdaq").[8]

The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of Members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected Members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, an exchange charging excessive fees would stand to lose not only connectivity revenues, but also revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendment to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act in that it is simply designed to set forth the Exchange's pro-rata billing for logical ports and is similar to that currently offered by one of the Exchange's competitors.[9] Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including logical port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Members and non-Members equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and paragraph (f) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

---

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Nasdaq Price List—Trade Connectivity *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#connectivity.* The Exchange notes that, unlike as proposed by the Exchange, Nasdaq does not pro-rate where the session is terminated within the first month of service.

[9] *Id.*

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGA–2016–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGA–2016–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGA–2016–18, and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19445 Filed 8–15–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78529; File No. SR–FICC–2016–004]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add a Clearing Fund Maintenance Fee

August 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2016, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the rules of the Government Securities Division ("GSD Rules") of FICC and the rules of the Mortgage-Backed Securities Division ("MBSD Rules") of FICC in order to add a new fee that will be charged to GSD Netting Members and MBSD Clearing Members in connection with the maintenance of the Clearing Fund, as described in greater detail below.[5] GSD Netting Members and MBSD Clearing Members are collectively referred to herein as "members."

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will add a fee that will be charged to members in connection with the maintenance of the Clearing Fund.

Clearing Fund Maintenance Fee

Pursuant to the proposed rule change, FICC proposes to introduce a new fee, to be known as the Clearing Fund Maintenance Fee, which will be charged to members in arrears on a monthly basis.

The proposed rule change will (i) diversify FICC's revenue sources and mitigate FICC's dependence on revenues driven by trading volumes and (ii) add a stable revenue source that will contribute to FICC's operating margin by offsetting increasing costs and expenses, as further described below.

Diversify Revenue Sources

FICC's current revenues are highly variable due to the nature of the clearing services, which are primarily driven by trading volumes, but, as a utility, FICC's expenses are largely fixed. The combination of fixed costs and variable revenues represents a financial risk for FICC. To mitigate such financial risk, FICC is seeking to diversify its variable revenue base with the proposed new fee, which will introduce a revenue source that is not dependent on trading volumes. The Clearing Fund Maintenance Fee will be ratably based on the member's Clearing Fund average cash deposit.

Offset Increasing Costs and Expenses

FICC seeks to achieve a target operating margin to cover operating expenses and fund capital expenditures as well as investments in its clearing services and risk management infrastructure; however, FICC faces continued increasing risk management costs as well as regulatory and compliance-related expenses that need to be offset by revenue growth in order to meet the target operating margin. Such increased costs and expenses, if not offset by revenue growth, could weaken FICC's financial position over time. As such, FICC is seeking to implement the Clearing Fund Maintenance Fee to add an additional revenue source to offset increasing costs and expenses.

---

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Capitalized terms not defined herein are defined in the GSD Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf*, and the MBSD Rules, available at *www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_mbsd_rules.pdf.*

Proceeds of the Clearing Fund Maintenance Fee will be used primarily to offset risk management costs, regulatory and compliance expenses and for general operating expenses.

Calculation

The amount of the monthly Clearing Fund Maintenance Fee for a member will be calculated monthly, in arrears, as the product of 0.25% and the average of the member's actual cash deposit to the Clearing Fund as of the end of each day of the month, multiplied by the number of days in that month and divided by 360; provided that, the investment rate of return on investment by FICC of cash in the Clearing Fund for that month is equal to or greater than 0.25%. No fee will be charged to any member for a month in which the monthly rate of return on investment of cash in the Clearing Fund is less than 0.25%.

Based on the 2015 average actual cash deposits to the Clearing Fund, the expected annual revenue to be generated by the Clearing Fund Maintenance Fee is approximately $24 million.

Member Impact

The proposed rule change will impose the Clearing Fund Maintenance Fee on all members that are required to make deposits to the Clearing Fund.

The Clearing Fund Maintenance Fee is a monthly fee based ratably upon the amount of the member's daily actual cash deposited to the Clearing Fund; it is applicable when the monthly rate of return on investment of cash in the Clearing Fund is equal to or greater than 0.25%.

Because the Clearing Fund Maintenance Fee per member is proportional to the average monthly cash deposit of the member to the Clearing Fund, members that generate higher levels of activity and make greater use of FICC's services will generally be subject to a higher fee, because such members typically maintain higher Clearing Fund deposits pursuant to the GSD Rules and the MBSD Rules.

FICC views the proposed implementation of the Clearing Fund Maintenance Fee as a prudent way to minimize the magnitude of, and mitigate the need for, potential future increases in other fees.

The proposed change will take effect on August 1, 2016.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act[6] requires that the GSD Rules and MBSD Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The proposed fee is equitably allocated among members because it is based on each member's utilization of FICC's services, as measured by their Clearing Fund deposits. In addition, FICC believes that the proposed fee is reasonable because it will enable FICC to better align its revenue with the costs and expenses required for FICC to provide services to its members with a nominal impact on members. Therefore, FICC believes the proposed rule change is consistent with section 17A(b)(3)(D).[7]

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed fee will be equitably allocated among members based on each member's utilization of FICC's services. Members that have a higher level of activities and greater use of FICC's services will generally be subject to a higher Clearing Fund Maintenance Fee and members with lower usage will pay less.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[8] of the Act and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2016–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2016–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2016–004 and should be submitted on or before September 6, 2016.

---

[6] 15 U.S.C. 78q–1(b)(3)(D).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19433 Filed 8–15–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78527; File No. SR–BatsBZX–2016–47]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Closing Contingency Procedure

August 10, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to establish a Closing Contingency Procedure that would enable the Exchange to designate a back-up exchange to provide an official closing price in the event that the Exchange's market is impaired and unable to execute a closing auction for all or a subset of listed securities under the Exchange's standard closing procedures. The Commission has recently approved substantially similar proposals submitted by the New York Stock Exchange LLC ("NYSE") and the Nasdaq Stock Market LLC ("Nasdaq").[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange has robust and resilient systems that are designed to ensure fair and orderly markets, including multiple redundancies and back-up systems. Currently, the Exchange's Official Closing Price is defined in Rule 11.23(a)(3) as the price disseminated to the consolidated tape as the market center closing trade. In this proposal, the Exchange is proposing to amend Rule 11.23 to establish Closing Contingency Procedures.

As proposed, the Exchange, as a listing market, will designate a back-up exchange to provide an official closing price in the event that the Exchange's market is impaired and unable to execute a closing auction for all or a subset of listed securities under the standard closing procedures set forth in Rule 11.23(c). The Exchange would invoke the Closing Contingency Procedures only after it determines that the standard closing procedure is unavailable due to technical difficulties. The Exchange will employ internal testing procedures to determine the availability of each set of operating procedures, and thereby position itself to make and announce such a determination as rapidly as possible. The Exchange would invoke the Closing Contingency Procedures by announcing publicly that its market is impaired and unable to execute a closing auction. If the Exchange makes that announcement prior to 3:00 p.m., Eastern Standard Time ("EST"), the official closing price from the Exchange's designated back-up exchange would serve as the Exchange's Official Closing Price. If the Exchange makes that announcement after 3:00 p.m., EST, the Securities Information Processor ("SIP") would calculate a Volume Weighted Average Price ("VWAP"), described in more detail below. Whether the announcement is made before or after 3:00 p.m., EST, the SIP would publish the Exchange's Official Closing Price on the Exchange's behalf either: (1) Based on a message from the Exchange's back-up exchange or (2) based on the VWAP calculation.

Designation of Back-Up

The Exchange proposes to designate NYSE Arca as its official back-up exchange. The Exchange believes that NYSE Arca is best positioned to serve as its back-up for two primary reasons: (1) NYSE Arca and the Exchange's membership substantially overlaps; (2) NYSE Arca already operates an effective closing cross that it can use to execute a closing transaction in the Exchange's listed securities.[6] In the event the Exchange is unable to execute a closing auction, the Exchange's members that are also NYSE Arca members should be technically prepared to transfer liquidity to NYSE Arca to ensure a deeply liquid closing transaction.

The Operating Committees for the CQ/CT and Nasdaq UTP Plans have already voted to modify the SIPs to support this proposal. Specifically, each exchange that is designated as a back-up exchange (Nasdaq and NYSE Arca), will disseminate via the SIPs an official closing price in every listed security marked with the .M sale condition code.

The SIPs will apply the following procedures:

---

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release Nos. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR–NYSE–2016–18) ("Notice of Filings of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendment No. 1, To Provide for How the Exchanges Would Determine an Official Closing Price if the Exchanges Are Unable To Conduct a Closing Transaction"); 78014 (June 8, 2016), 81 FR 38755 (June 14, 2016) (SR–NASDAQ–2016–035) ("Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Secondary Contingency Procedures for the Exchange's Closing Cross").

[6] The Exchange notes that quotations and executions for Exchange-listed securities are represented on Tape B, which is also where information regarding NYSE Arca and NYSE MKT listed securities is represented. The Exchange also notes that like the Exchange, NYSE Arca trades securities listed on all tapes (Tapes A, B and C), including securities listed on the Exchange.

1. Each primary listing exchange would print a standardized Official Closing Price ("OCP"), with a sale condition 'M,' in each security it trades as primary.

2. Each primary listing exchange would include in its rules that, in the event that it is impaired and cannot conduct a closing auction, the exchange's contingency OCP would be the OCP of a specified "back-up exchange" or, if the impairment is announced after 3:00 p.m., EST, a VWAP calculation.

3. In the event that a primary listing exchange publicly announces that it is impaired and unable to conduct a closing auction for all or a subset of its primary symbols, the SIP would print the primary listing exchange's contingency OCP as the OCP of the primary listing exchange, including calculation of the VWAP. The advantages of the SIP reprinting the contingency OCP as the OCP of the primary listing exchange, rather than the back-up exchange separately sending to the SIP its OCP as the OCP of the primary exchange are that:

a. The SIP provides a centralized service of which each primary listing exchange can take advantage
b. Participant—line validations are retained
c. There is assurance of full symbol coverage
d. The SIP provides a single location for future updates or configuration changes or new primary listing exchanges
e. A single source and method for VWAP calculations

4. The primary listing exchange's contingency OCP would differ depending on what time the impaired primary market announces that it will be using the closing contingency plan.

a. If announced prior to 3:00 p.m., EST, the primary listing exchange's contingency OCP would be based on the following hierarchy:

i. Official Closing Price (sale condition 'M') of a pre-designated back-up exchange(s). An exchange that has more than 1 back-up exchange as part of its hierarchy of contingency OCPs, will announce publicly the exchange(s) that will be relied on for the contingency OCP.

ii. If no such contingency OCP exists, then a VWAP calculated by the SIP of the final 5 minute regular trading session. The VWAP calculations would include all last sale eligible trades in the last 5 minutes of the normal trading day, up to the time that the VWAP is processed. The VWAP would include the closing auctions prints of all markets and would take into account any trade breaks or corrections up to the time the VWAP is processed. Because the VWAP would include any last-sale eligible trades, busts, or corrections that were reported up to the time that the SIP calculates the VWAP, the Exchange believes that the VWAP price would reflect any pricing adjustments that may be reported after 4:00 p.m. EST.

iii. If no last sale eligible trades are printed in the last 5 minutes of the normal trading day, then the consolidated last sale during regular trading hours.

iv. If no such same day consolidated last sale eligible trades exist, then the primary listing exchange's prior trading day's Official Closing Price.

v. If no Official Closing Price for a security can be determined under subsections (i), (ii), (iii), or (iv) above, the Exchange would not publish and Official Closing Price for such security.

b. If announced after 3:00 p.m., EST, the primary listing exchange's contingency OCP would be determined by the following hierarchy:

i. Final 5 minute VWAP of regular trading session (same calculation as described above).

ii. If no last sale eligible trades printed in the last 5 minutes of the normal trading day, then the consolidated last sale during regular trading hours.

iii. If no such same day consolidated last sale eligible trades exist, then the primary listing exchange's prior trading day's Official Closing Price.

iv. If no Official Closing Price for a security can be determined under subsections (i), (ii), or (iii) above, the Exchange would not publish an Official Closing Price for such security.

Whenever the Exchange utilizes the Closing Contingency Procedures, it will cancel all open interest designated for the Exchange's close residing in its systems. This is designed to give members the opportunity to route their orders to alternative execution venues. Also, in all cases involving the Closing Contingency Procedures, after hours trading will begin at 4:00 p.m. EST or upon resolution of the disruption that triggered the use of these proposed procedures.

Because of the technology changes associated with this proposed rule change, the Exchange will implement the proposed back-up procedures for determining an Official Closing Price no later than 120 days after filing of this proposal and will announce the implementation of the procedures by issuing a Trade Desk Notice.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[7] in general, and furthers the objectives of section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change will promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would provide transparency in how the Exchange would determine the Official Closing Price in Exchange-listed securities when the Exchange is unable to conduct a closing auction due to a systems or technical issue. The Exchange believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed determination of the Exchange's Official Closing Price was crafted in response to input from industry participants and would:

- Provide a pre-determined, consistent solution that would result in a closing print to the SIP within a reasonable time frame from the normal closing time;
- minimize the need for industry participants to modify their processing of data from the SIP; and
- provide advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction.

More specifically, the Exchange believes the proposed hierarchy for determining the Exchange's Official Closing Price if the Exchange determines that it is impaired before 3:00 p.m., EST, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal, which is based on input from market participants, would provide sufficient time for market participants to direct closing-only interest to a designated alternate exchange in time for such interest to participate in a closing auction on such alternate venue in a meaningful manner.

---

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

The Exchange further believes that relying on the official closing price of a designated alternate exchange would provide for an established hierarchy for determining an Official Closing Price for an Exchange-listed security if there is insufficient interest to conduct a closing auction on the alternate exchange. In such case, the rules of NYSE Arca and the Exchange already provide a mechanism for determining an official closing price for securities that trade on those markets.

The Exchange further believes that if the Exchange determines after 3:00 p.m., EST, that it is impaired and unable the conduct a closing auction, the proposed VWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a mechanism to determine the value of an affected security for purposes of determining the Exchange's Official Closing Price. By using a volume-weighted calculation that would include the closing transactions on an affected security on alternate exchanges as well as any busts or corrections that were reported up to the time that the SIP calculates the value, the Exchange believes that the proposed calculation would reflect the correct price of a security.

In addition, by using a VWAP calculation rather than the last consolidated last-sale eligible price as of the end of regular trading hours, the Exchange would reduce the potential for an anomalous trade that may not reflect the true price of a security from being set as the Exchange's Official Closing Price for a security.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal would have minimal impact on market participants. As proposed, from the perspective of market participants, even if the Exchange were impaired, the SIP would publish an Official Closing Price for Exchange-listed securities on behalf of the Exchange in a manner that would be no different than if the Exchange were not impaired. If the Exchange determines that it is impaired after 3:00 p.m., EST, market participants would not have to make any system changes. If the Exchange determines that it is impaired before 3:00 p.m., EST, and designates an alternate exchange, market participants may have to do systems work to re-direct closing-only orders to the alternate exchange. However, the Exchange understands, based on input from market participants, that such changes would be feasible based on the amount of advance notice. In addition, the Exchange believes that designating an alternate exchange when there is sufficient time to do so would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow for the price-discovery mechanism of a closing auction to be available for impacted Exchange-listed securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather to provide for how the Exchange would determine an Official Closing Price for Exchange-listed securities if it is impaired and cannot conduct a closing auction due to a systems or technical issue. The proposal has been crafted with input from market participants, the Exchange, and the SIPs, and is designed to reduce the burden on competition by having similar back-up procedures across all primary listing exchanges if such exchange is impaired and cannot conduct a closing auction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsBZX–2016–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–47, and should be submitted on or before September 6, 2016.

---

[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19432 Filed 8–15–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: Safecode Drug Technologies Corp., Dynamic Ventures Corp.; Order of Suspension of Trading

August 12, 2016.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of Safecode Drug Technologies Corp. ("Safecode") (CIK No. 1508470), a Delaware corporation with its principal office located in Jerusalem, Israel with stock quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link") under the symbol SAFC because it has not filed any periodic reports since the period ended June 30, 2013. On April 5, 2016, a delinquency letter was sent by the Division of Corporation Finance to Safecode requesting compliance with its periodic filing obligations. Safecode did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Rule 301 of Regulation S–T under the Securities Act of 1933 ("Securities Act") (17 CFR 232.301 and Section 5.4 of the EDGAR Filer Manual.)

It appears to the Commission that there is a lack of current and accurate information concerning the securities of Dynamic Ventures Corp. ("Dynamic Ventures") (CIK No. 1454384) a Delaware corporation with its principal place of business listed as Scottsdale, Arizona with stock quoted on OTC Link under the symbol DYNV, because it has not filed any periodic reports since the period ended June 30, 2012. On March 1, 2016 a delinquency letter was sent by the Division of Corporation Finance to Dynamic Ventures requesting compliance with its periodic filing obligations. Dynamic Ventures did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Rule 301 of Regulation S–T under the Securities Act (17 CFR 232.301 and Section 5.4 of the EDGAR Filer Manual.)

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on August 12, 2016, through 11:59 p.m. EDT on August 25, 2016.

By the Commission.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2016–19607 Filed 8–12–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78534; File No. SR–CBOE–2016–060]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

August 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Exchange proposes to amend its Fees Schedule with respect to fees for the Extended Trading Hours ("ETH") session. Specifically, in order to promote and encourage trading during the ETH session, the Exchange currently waives ETH Trading Permit and Bandwidth Packet fees for one (1) of each initial Trading Permits and one (1) of each initial Bandwidth Packet, per affiliated TPH. The Exchange notes that waiver is set to expire July 31, 2016. The Exchange also waives fees through July 31, 2016 for a CMI and FIX login ID if the CMI and/or FIX login ID is related to a waived ETH Trading Permit and/or waived Bandwidth packet. In order to continue to promote trading during ETH, the Exchange wishes to extend these waivers through December 2016.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[4] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation [sic] transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

---

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

The Exchange believes extending the waiver of ETH Trading Permit and Bandwidth Packet fees for one of each type of Trading Permit and Bandwidth Packet, per affiliated TPH through December 31, 2016 is reasonable, equitable and not unfairly discriminatory, because it promotes and encourages trading during the ETH session and applies to all ETH TPHs. The Exchange believes it's also reasonable, equitable and not unfairly discriminatory to waive fees for Login IDs related to waived Trading Permits and/or Bandwidth Packets in order to promote and encourage ongoing participation in ETH and also applies to all ETH TPHs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because it applies to all Trading Permit Holders and encourages Trading Permit Holders to participate in the ETH session.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–060. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–060 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19443 Filed 8–15–16; 8:45 am]

BILLING CODE 8011–01–P

---

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78526; File No. SR–OCC–2016–008]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise The Options Clearing Corporation's Schedule of Fees

August 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2016, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change by OCC is to revise OCC's Schedule of Fees effective October 1,

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

2016, or such later date as OCC may determine and announce to its Clearing Members via Information Memo,[5] to implement a change of fees in conjunction with enhancements to OCC's Stock Loan Program (''Program'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to revise OCC's Schedule of Fees to more adequately cover the expenses incurred by OCC to operate the Program, including costs associated with ongoing and anticipated operational and risk management enhancements to the Program. The revised fee schedule would become effective on October 1, 2016, or such later date as OCC may determine and announce via Information Memo.[6]

The Program began in 1993 as a tool for participants to use borrowed and loaned securities to reduce OCC margin requirements by reflecting the actual risks of their inter-market hedged positions. When the Program began, OCC implemented a risk management infrastructure based on the Program's scale and complexity. Over time, OCC's Clearing Members have discovered that the Program can provide valuable risk management and capital efficiency solutions. Specifically, the credit risk of a given stock loan transaction in the Program is significantly lower than a bilaterally executed stock loan as a result of OCC's novation and guarantee of stock loans in the Program, and Clearing Members' stock loans in the Program are netted against their other positions held at OCC. These factors have caused significant increases in both the scale of the Program and the resulting risk management demands. As a result of the increased operational and risk management demands of the Program, and in light of OCC's heightened responsibilities as a designated Systemically Important Financial Market Utility, OCC is considering a number of enhancements to its operational and risk management systems and processes, which require both process redesign and increased operating expenses. These enhanced systems and processes would include:

- The capture and validation of trades prior to facilitating settlement;
- A new position accounting system to support expanded guarantee of contract terms such as rebate rate and term;
- An automated trade correction mechanism;
- Automated systems to support re-matching upon the default of a participant lending and borrowing the same security; and,
- Automation of the default management process for any unmatched positions and limitation of the close-out period.

Taking these enhancements into account, OCC analyzed its pricing for the Program, which has not been updated since 2009, against the Program's annual revenue as well as the Program's expenses assessed against OCC by the Depository Trust Company (''DTC'') and determined that current pricing would not reflect the expenses incurred by OCC to make the Program more robust and sustainable given its increased scope and risk managements demands.

OCC arrived at the fee schedule presented herein by determining pricing for the Program that: (1) Covers OCC's costs in running the Program, including the transaction fees charged to OCC by DTC; (2) account for costs incurred by OCC to make the operational and risk management enhancements required to make the Program more robust and sustainable; and, (3) better reflects the value the Program provides participants, particularly to borrowers, by providing for a centrally cleared and risk managed stock loan clearing solution. As a result of the aforementioned analysis, OCC proposes to revise its Schedule of Fees[7] by adding a monthly 0.4 basis point annualized charge for borrowers on average daily notional outstanding balances in addition to the current $1 clearing fee for both lenders and borrowers, which would be retained under the proposed fee change.[8]

OCC does not believe that its current pricing schedule reflects the value that the Program provides to its participants, particularly to borrowers using the Program. Securities lending transactions are typically driven by the need for borrowers to obtain specific securities. Lenders, in comparison, do not have a specific need to lend their securities and the price of a given stock loan transaction in part compensates the lender for the borrower's credit risk. As a result, it is common for the borrower to pay all ancillary fees related to a given stock loan transaction. Moreover, while borrowers and lenders both benefit from the risk management and capital efficiencies gained by clearing stock loan transactions through the Program, on balance, the capital efficiencies for borrowers are greater. Furthermore, the implementation of the aforementioned operational and risk management enhancements would provide for a more robust and sustainable Program, and as a result, OCC hopes to be able to build on this foundation in the future to attract a broader market of securities borrowers and lenders to the Program, particularly securities lenders, which would potentially lead to borrowers in the Program receiving better loan rates because there would a greater amount of willing lenders.

2. Statutory Basis

OCC believes that the proposed rule change concerning a change to OCC's clearing fees is consistent with Section 17A(b)(3)(D)[9] of the Act, because the proposed fee schedule provides for the equitable allocation of reasonable fees among its Clearing Members. OCC believes the proposed fee change is reasonable because it is designed to cover the costs incurred by OCC to implement operational and risk management enhancements designed to make the Program more robust and sustainable, particularly given the increased scale and risk management demands of the Program, and the increased revenue from the fee change is anticipated to help offset the increased expenses incurred by OCC to make such enhancements. These enhancements would strengthen the Program's operational resiliency and risk management capabilities, potentially enabling the introduction of further enhancements that would allow the Program to service a broader market of participants, which in turn would provide economic benefits and lower risk for both borrowers and lenders. Moreover, OCC believes that the proposed fee schedule would provide for an equitable allocation of clearing fees to users of the Program. Specifically, OCC would retain the $1 new loan transaction clearing fee for both lenders and borrowers, and the proposed fee change would impose an additional monthly 0.4 basis point annualized charge for borrowers based on average daily notional outstanding balances to more appropriately allocate costs of the Program to those users benefiting most from the Program. The proposed fee change would therefore better align Program fees with the industry, in which is it common practice for borrowers to bear additional costs associated with stock loan transactions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

---

[5] On August 8, 2016, pursuant to a telephone conversation with Commission staff, OCC agreed that if OCC determines that an effective date later than October 1, 2016 is required for the fee change that is the subject of this filing, OCC will re-file a revised Schedule of Fees specifying the new effective date. In addition, OCC agreed to the insertion of clarifying language concerning its determination of any later effective date in its description of the proposed rule change.

[6] *See supra* note 5.

[7] These changes are also reflected in Exhibit 5.

[8] OCC notes that the proposed fee increase is designed to help defray increased expenses to OCC from the development and implementation of the ongoing and anticipated operational and risk management enhancements discussed above. Moreover, OCC would continue to monitor Program revenue and expenses in order to determine if further revisions to OCC's Schedule of Fees are required so that revenue is commensurate with expenses and the services provided. Any subsequent changes to OCC's Schedule of Fees would be the subject of a subsequent proposed rule change filed with the Commission.

[9] 17 U.S.C. 78q–1(b)(3)(D).

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would have any impact or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[10] Although this proposed rule change would assess an additional fee against borrowers utilizing the Program that is not assessed against lenders, as explained above, OCC believes that the proposed rule change appropriately aligns how fees are assessed with the economic and risk management benefits of the Program, and enables OCC to provide a more robust Program that will expand its user base and benefit borrowers. Also, the proposed fee changes would not disadvantage or favor any particular borrower or lender utilizing the Program in relationship to another borrower or lender, respectively, because the proposed clearing fees apply equally to all users of the Program. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2016–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2016–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_008.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2016–008 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19431 Filed 8–15–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78533; File No. SR–NASDAQ–2016–086]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade the Shares of the VanEck Vectors Long/Flat Commodity ETF

August 10, 2016.

I. Introduction

On June 10, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the VanEck Vectors Long/Flat Commodity ETF ("Fund") under Nasdaq Rule 5735. The Commission published notice of the proposed rule change in the **Federal Register** on June 30, 2016.[3] On July 15, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

---

[10] 15 U.S.C. 78q–1(b)(3)(I).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by VanEck Vectors ETF Trust ("Trust"), which was organized as a Delaware statutory trust on March 15, 2001.[5] The investment adviser and the administrator to the Fund will be Van Eck Absolute Return Advisers Corporation ("Adviser"), and the Fund currently does not intend to use a sub-adviser.[6] Van Eck Securities Corporation ("Distributor") will be the distributor of the Fund's Shares. The Bank of New York Mellon will act as the custodian of the Fund's assets and provide transfer agency and fund accounting services to the Fund.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including the Fund's portfolio holdings and investment restrictions.[7]

A. Exchange's Description of the Fund's Principal Investments

The Fund's investment objective will be to seek long-term capital appreciation while seeking to manage volatility and reduce downside risk during sustained market declines. The Fund will seek to achieve its investment objective by investing, under normal circumstances, in exchange-traded commodity futures contracts and, under certain limited circumstances, other commodity-linked instruments as set forth in "Other Investments" hereunder (collectively, "Commodities Instruments"). The Fund will invest in Commodities Instruments primarily through a wholly-owned subsidiary of the Fund organized under the laws of the Cayman Islands ("Subsidiary").[8]

The Fund (directly or indirectly through the Subsidiary) will normally invest in exchange-traded commodity futures contracts that are components of the Morningstar® Long/Flat Commodity Index℠ ("Benchmark"), an index composed of futures contracts on 20 heavily traded commodities across the energy, agriculture, industrial metals, precious metals, and livestock sectors. The Adviser will employ a rules-based investment approach when selecting Commodities Instruments based upon momentum characteristics of the Commodities Instruments. Commodities Instruments are assessed on a monthly basis by comparing current prices to 12-month moving averages. The Fund's positions will be either long[9] or flat.[10] The Fund intends to take long positions in those Commodities Instruments whose prices are above their 12-month moving average. Conversely, the Fund intends to take flat positions to manage volatility and reduce downside risk for those Commodities Instruments whose prices are below their 12-month moving average. The Fund will not be an "index tracking" ETF and may not always invest in all of the Benchmark's components, or in the same proportion, and it may invest in Commodities Instruments outside the Benchmark.[11]

B. Exchange's Description of the Fund's Non-Principal Investments

As noted above, the Fund intends to invest first in exchange-traded commodity futures contracts. However, in the event the Fund reaches the position limits applicable to one or more exchange-traded commodity futures contracts or a futures exchange imposes limitations on the Fund's ability to maintain or increase its positions in an exchange-traded commodity futures contract after reaching accountability levels or a price limit is in effect on an exchange-traded commodity futures contract during the last 30 minutes of its regular trading session, the Fund's intention is to invest first in commodity-based swap agreements cleared through a central clearing house or the clearing house's affiliate ("Cleared Swaps") to the extent permitted under the position limits applicable to Cleared Swaps and appropriate in light of the liquidity in the Cleared Swaps market, and then, using its commercially reasonable judgment, in forward contracts on commodities, exchange-traded options on futures contracts, and commodity-based swaps other than Cleared Swaps (collectively, including Cleared Swaps, "Other Commodity Instruments").

---

[3] *See* Securities Exchange Act Release No. 78150 (Jun. 24, 2016), 81 FR 42768 ("Notice").

[4] In Amendment No. 1 the Exchange clarified the usage of the defined terms used for commodities instruments in the portfolio and clarified the application of the percentage limitation on equity securities that trade in markets that are not members of the Intermarket Surveillance Group ("ISG") or are not parties to a comprehensive surveillance sharing agreement with the Exchange. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nasdaq-2016-086/nasdaq2016086-1.pdf.* Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A ("Registration Statement") with the Commission. *See* Registration Statement on Form N–1A for the Trust, dated November 12, 2015 (File Nos. 333–123257 and 811–10325). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the Investment Company Act of 1940 ("1940 Act"). *See* Investment Company Act Release No. 29571 (Jan. 24, 2011) (File No. 812–13601).

[6] According to the Exchange, the Adviser is not a broker-dealer, although it is affiliated with Van Eck Securities Corporation, a broker-dealer, and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio. In the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition of, and changes to, the portfolio. In addition, personnel who make decisions on each Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[7] The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, net asset value ("NAV") calculation, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice, as modified by Amendment No. 1 thereto, and the Registration Statement, as applicable. *See* Notice, Amendment No. 1 to the proposed rule change, and Registration Statement, *supra* notes 3, 4, and 5, respectively, and accompanying text.

[8] The Subsidiary will be wholly-owned and controlled by the Fund and will be advised by the Adviser. The Exchange represents that the Fund's investment in the Subsidiary may not exceed 25% of the value of the Fund's total assets at each quarter-end of the Fund's fiscal year. The Fund's investment in the Subsidiary is expected to provide the Fund with exposure to Commodities Instruments within the limits of the federal tax laws, which limit the ability of investment companies like the Fund to invest directly in such instruments. The Subsidiary will have the same investment objective as the Fund and will follow the same general investment policies and restrictions, except that unlike the Fund, it may invest without limit in Commodities Instruments. In addition, the Subsidiary will not be registered under the 1940 Act and will not be directly subject to its investor protections, except as noted in the Registration Statement. The Trust's board ("Board") will have oversight responsibility for the investment activities of the Fund, including its investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Adviser will receive certain fees for managing the Subsidiary's assets, and the Adviser will waive or credit such amounts against the fees payable to the Adviser by the Fund. It is expected that the Subsidiary will become party to the existing custody agreement, transfer agency agreement and accounting agreement of the Trust and Fund.

[9] For the purposes of this filing, a "long" position is a position that will increase in market price if the price of the commodity futures contract is rising during the period when the position is open.

[10] For the purposes of this filing, a "flat" position is a position that will not increase or decrease in market price whether the price of the commodity futures contract to which it relates is rising or falling.

[11] *See* Notice, *supra* note 3, 81 FR at 42770 (providing, in table format, detailed information relating to each of the commodity futures contracts in the Benchmark, including each instrument's trading hours, futures exchange, and ticker symbol). The Exchange represents that all of the futures exchanges represented in the Benchmark are members of ISG.

The Fund (and the Subsidiary, as applicable) expects to invest its remaining assets in any one or more of the following: U.S. government securities; [12] money market funds; cash and other cash equivalents; [13] treasury inflation-protected securities; sovereign debt obligations of non-U.S. countries; and repurchase agreements that provide liquidity, serve as margin, or collateralize the Fund's or the Subsidiary's investments in exchange-traded commodity futures contracts.

The Fund also may invest directly in exchange-traded funds ("ETFs"),[14] exchange-traded closed end funds (to the extent permitted by the 1940 Act and certain exemptive relief issued in thereunder), and exchange-traded notes ("ETNs") that provide exposure to commodities.[15] The Fund may also invest in commodity-related foreign and domestic equity securities.[16]

C. Exchange's Descriptions of the Fund's Investment Restrictions

According to the Exchange, the Fund may not make loans, except that it may (i) lend portfolio securities, (ii) enter into repurchase agreements, (iii) purchase all or a portion of an issue of debt securities, bank loan or participation interests, bank certificates of deposit, bankers' acceptances, debentures or other securities, whether or not the purchase is made upon the original issuance of the securities, and (iv) participate in an interfund lending program with other registered investment companies, all in accordance with the 1940 Act. In addition, the Fund may not borrow money, except as permitted under the 1940 Act, and as interpreted or modified by regulation from time to time. The Fund also may not issue senior securities, except as permitted under the 1940 Act, and as interpreted or modified by regulation from time to time.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment).[17] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance. An illiquid security is generally considered to be a security that cannot be sold or disposed of in the ordinary course of business within seven days at or near its carrying value.

The Fund may not purchase any security if, as a result of that purchase, 25% or more of its total assets would be invested in securities of issuers having their principal business activities in the same industry. This limit does not apply to securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or securities of other investment companies.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Exchange Act,[19] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[20] which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. According to the Exchange, quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. Quotation and last-sale information for any underlying exchange-traded equity will also be available via the quote and trade service of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans. Quotation and last-sale information for any underlying exchange-traded options will also be available via the quote and trade service of their respective primary exchanges. Quotation and last-sale information for any underlying exchange-traded futures contracts will be available via the quote and trade service of their respective primary exchanges. Information on the Morningstar Long/Flat Commodity Index℠ will be available on the Morningstar Indexes Web site.

---

[12] Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the "full faith and credit" of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[13] Cash equivalents will include banker's acceptances, commercial paper, and certificates of deposit.

[14] ETFs in which the Fund invests will be listed and traded in the U.S. on registered exchanges. The ETFs in which the Fund will invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges, or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange. The Exchange represents that the Fund will not hold inverse, leveraged, and inverse leveraged ETFs. *See* Notice, *supra* note 3, 81 FR at 42770, n.14.

[15] ETNs in which the Fund invests will be listed and traded in the U.S. on registered exchanges. The ETNs in which the Fund will invest include Securities Linked to the Performance of Indexes and Commodities, Including Currencies (as described in Nasdaq Rule 5710), and Index-Linked Exchangeable Notes (as described in Nasdaq Rule 5711). The Exchange represents that the Fund will not hold inverse, leveraged, and inverse leveraged ETNs. *See id.*

[16] Commodity-related foreign and domestic equity securities will be comprised of exchange-traded common stocks of companies that operate in commodities, natural resources and energy businesses, and in associated businesses, as well as companies that provide services or have exposure to such businesses.

[17] In reaching liquidity decisions, the Adviser may consider factors such as but not limited to the following: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C)(iii).

On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the "Disclosed Portfolio," as defined in Nasdaq Rule 5735(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[21] In addition, an estimated value of the Fund, defined in Exchange Rule 5735(c)(3) as "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's portfolio (including the Subsidiary's portfolio), will be disseminated. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service [22] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.[23] The NAV of the Fund will be determined each business day as of the close of trading (ordinarily 4:00 p.m. Eastern Time) on Nasdaq.[24] In addition, a basket composition file, which includes the security names and quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via NSCC.

Intra-day, executable price quotations on the exchange-traded assets held by the Fund and the Subsidiary, including futures contracts, options on futures contracts, ETFs, ETNs, closed-end funds, and foreign and domestic equity securities are expected to be available on the exchange on which they are traded. Intra-day, executable price quotations on swaps, money market funds, forward contracts, U.S. government securities, cash and other cash equivalents, treasury inflation-protected securities, sovereign debt obligations of non-U.S. countries, and repurchase agreements will be available from major broker-dealer firms. Intra-day price information will also be available through subscription services, such as Bloomberg and Reuters. Additionally, the Trade Reporting and Compliance Engine ("TRACE") of the Financial Industry Regulatory Authority ("FINRA") will be a source of price information for certain fixed income securities held by the Fund.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[25] Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority [26] that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[27] In addition, Nasdaq Rule 5735(g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Exchange states that the Adviser is affiliated with the Distributor, a broker-dealer, and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio.[28]

---

[21] Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding), the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

[22] The Exchange states that the NASDAQ OMX Global Index Data Service ("GIDS") is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. *See* Notice, *supra* note 3, 81 FR at 42773, n.26.

[23] The Exchange represents that the dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day. *See id.* at 42773.

[24] According to the Exchange, ETFs, exchange-traded closed-end funds, ETNs, and commodity-related foreign and domestic equity securities, will be based on the securities' closing prices on local markets, when available. Due to the time differences between the United States and certain countries, securities on these non-U.S. exchanges may not trade at times when Shares of the Fund will trade. In the absence of a last reported sales price, or if no sales were reported, and for other assets for which market quotes are not readily available, values may be based on quotes obtained from a quotation reporting system, established market makers or by an outside independent pricing service using data reflecting the earlier closing of the principal markets for those securities. U.S. government securities, treasury inflation-protected securities, and sovereign debt obligations of non-U.S. countries will normally be valued on the basis of quotes from brokers or dealers, established market makers, or an outside independent pricing service. Short-term investments purchased with a remaining maturity of 60 days or less, including repurchase agreements and cash equivalents, will be valued on the basis of quotes from broker dealers, established major market makers, an independent pricing service, or at amortized cost. Money market funds will be valued at their reported closing NAV. Futures contracts and options on futures contracts, which are traded on exchanges, will be valued at the current settle price for like contracts acquired on the day on which the futures contract will be valued as of the close of such exchanges. Other Commodity Instruments not traded on exchanges will generally be valued daily based upon quotations from market makers or by a pricing service and in accordance with the Trust's valuation policies and procedures. Prices obtained by an outside independent pricing service may use information provided by market makers or estimates of market values obtained from yield data related to investments or securities with similar characteristics and may use a computerized grid matrix of securities and its evaluations in determining what it believes is the fair value of the portfolio securities. If a market quotation for a security is not readily available or the Adviser believes it does not otherwise accurately reflect the market value of the security at the time the Fund calculates its NAV, the security will be fair valued by the Adviser in accordance with the Trust's valuation policies and procedures approved by the Board.

[25] These may include: (1) The extent to which trading is not occurring in the securities and other assets constituting the Disclosed Portfolio of the Fund and the Subsidiary; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[26] Nasdaq Rule 5730(c)(4) defines "Reporting Authority."

[27] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[28] *See supra* note 6. The Exchange further represents that an investment adviser to an open-

Continued

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will conform to the initial and continued listing criteria under Nasdaq Rule 5735.[29]

(2) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the FINRA on behalf of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[30]

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading information it can obtain relating to the Shares, other exchange-traded securities and other assets held by the Fund and the Subsidiary, which include exchange-traded commodity-related equity securities, exchange-traded futures contracts, exchange-traded options on futures contracts, ETNs, ETFs and exchange-traded closed-end funds, with other markets and other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares, and such exchange-traded securities and other assets held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, and such exchange-traded securities and other assets held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.[31]

(4) With respect to the exchange-traded commodity futures contracts and options on futures contracts (if applicable) held, not more than 10% of the weight of such futures contracts and options on futures contracts in the aggregate shall consist of instruments whose principal trading market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. In addition, not more than 10% of the equity securities (including shares of ETFs, closed-end funds, and commodity-related foreign and domestic equity securities) and ETNs in which the Fund may invest will, in the aggregate, be invested in securities that trade in markets that are not members of the ISG or are not parties to a comprehensive surveillance sharing agreement with the Exchange.

(5) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(6) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how and by whom the information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(7) For initial and/or continued listing, the Fund and the Subsidiary must be in compliance with Rule 10A–3 under the Exchange Act.[32]

(8) The Fund will not hold inverse, leveraged, and inverse leveraged ETFs or ETNs.[33]

(9) As noted above, the Fund (directly or indirectly through the Subsidiary) intends to invest principally in exchange-traded commodity futures contracts. Only in the event the Fund reaches the position limits applicable to one or more exchange-traded commodity futures contracts or a futures exchange imposes limitations on the Fund's ability to maintain or increase its positions in an exchange-traded commodity futures contract after reaching accountability levels or a price limit is in effect on an exchange-traded commodity futures contract during the last 30 minutes of its regular trading session, the Fund's intention is to invest first in Cleared Swaps, to the extent permitted under the position limits applicable to Cleared Swaps and appropriate in light of the liquidity in the Cleared Swaps market, and then, using its commercially reasonable judgment, in Other Commodity Instruments (other than Cleared Swaps).

(10) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser.

(11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

The Commission notes that the Fund and the Shares must comply with the initial and continued listing criteria in Nasdaq Rule 5735 for the Shares to be listed and traded on the Exchange. In addition, the Exchange represents that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the

---

end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[29] *See* Notice, *supra* note 3, 81 FR at 42774.

[30] *See id.* FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. *See id.* at 42774, n.28.

[31] *See id.* at 42774.

[32] *See* 17 CFR 240.10A–3.

[33] *See supra* notes 14 and 15.

continued listing requirements.[34] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.[35] This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, as modified by Amendment No. 1 to the proposed rule change.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act[36] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act,[37] that the proposed rule change (SR–NASDAQ–2016–086), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19442 Filed 8–15–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78530; File No. SR–DTC–2016–006]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add a Participants Fund Maintenance Fee

August 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2016, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the Fee Schedule[5] of DTC in order to add a new fee that will be charged to Participants in connection with the maintenance of the Participants Fund, as described in greater detail below.[6]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will add a fee that will be charged to Participants in connection with the maintenance of the Participants Fund.

Participants Fund Maintenance Fee

Pursuant to the proposed rule change, DTC proposes to introduce a new fee, to be known as the Participants Fund Maintenance Fee, which will be charged to Participants in arrears on a monthly basis.

The proposed rule change will (i) diversify DTC's revenue sources and mitigate DTC's dependence on revenues driven by settlement volumes and (ii) add a stable revenue source that will contribute to DTC's operating margin by offsetting increasing costs and expenses, as further described below.

Diversify Revenue Sources

DTC's current revenues from settlement are variable, but, as a utility, DTC's expenses are largely fixed. The combination of fixed costs and variable revenues represents a financial risk for DTC. To mitigate such financial risk, DTC is seeking to further diversify its variable revenues with the proposed new fee, which will introduce a revenue source that is not dependent on settlement volumes. The Participants Fund Maintenance Fee will be ratably based on the Participant's average Actual Participants Fund Deposit.

Offset Increasing Costs and Expenses

DTC seeks to achieve a target operating margin to cover operating expenses and fund capital expenditures as well as investments in its services and risk management infrastructure; however, DTC faces continued increasing risk management costs as well as regulatory and compliance-related expenses that need to be offset by revenue growth in order to meet the target operating margin. Such increased costs and expenses, if not offset by revenue growth, could weaken DTC's financial position over time. As such, DTC is seeking to implement the Participants Fund Maintenance Fee to add an additional revenue source to offset increasing costs and expenses.

Proceeds of the Participants Fund Maintenance Fee will be used primarily to offset risk management costs, regulatory and compliance expenses and for general operating expenses.

Calculation

The amount of the monthly Participants Fund Maintenance Fee for a Participant will be calculated monthly, in arrears, as the product of 0.25% and the average of the Participant's Actual Participants Fund Deposit as of the end of each day of the month, multiplied by the number of days in that month and divided by 360; provided that, the investment rate of return on investment by DTC of the Participants Fund for that month is equal to or greater than 0.25%. No fee will be charged to any Participant for a month in which the monthly rate of return on investment of the Participants Fund is less than 0.25%.

Based on the 2015 average Actual Participants Fund Deposit, the expected annual revenue to be generated by the

---

[34] The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.,* Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR–BATS–2015–100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

[35] *See id.* at 42775.

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf?la=en.*

[6] Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the "Rules"), *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

Participants Fund Maintenance Fee is approximately $5 million.

Participant Impact

The proposed rule change will impose the Participants Fund Maintenance Fee on all Participants.

The Participants Fund Maintenance Fee is a monthly fee based ratably upon the amount of the Participant's daily Actual Participants Fund Deposit; it is applicable when the monthly rate of return on investment of the Participants Fund is equal to or greater than 0.25%.

Because the Participants Fund Maintenance Fee per Participant is proportional to the average monthly Actual Participants Fund Deposit, Participants that, based on their usage of DTC's settlement service, place a greater demand on the settlement system will generally be subject to a higher fee, because such Participants are required to maintain higher deposits to the Participants Fund pursuant to the Rules.

DTC views the proposed implementation of the Participants Fund Maintenance Fee as a prudent way to minimize the magnitude of, and mitigate the need for, potential future increases in other fees.

The proposed change will take effect on August 1, 2016.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act[7] requires that DTC's Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The proposed fee is equitably allocated among Participants because it is based on each Participant's utilization of DTC's settlement service, as measured by their deposits to the Participants Fund. In addition, DTC believes that the proposed fee is reasonable because it will enable DTC to better align its revenue with the costs and expenses required for DTC to provide services to its Participants with a nominal impact on Participants. Therefore, DTC believes the proposed rule change is consistent with section 17A(b)(3)(D).[8]

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed fee will be equitably allocated among Participants as described above. That is, a Participant that, based on its usage of DTC's settlement service, places a greater demand on the settlement system will generally be subject to a higher fee, because such a Participant is required to maintain higher deposits to the Participants Fund pursuant to the Rules. Participants that place a lesser demand on the settlement system will pay less.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)[9] of the Act and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–DTC–2016–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2016–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2016–006 and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19440 Filed 8–15–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78535; File No. SR–BatsEDGX–2016–42]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

August 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

---

[7] 15 U.S.C. 78q–1(b)(3)(D).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to: (i) Adopt a new tier called the Cross-Asset Tier under footnote 1; and (ii) modify the billing policy for the logical port fees.

Logical Port Fees

The Exchange proposes to amend its fee schedule to modify the billing policy for the logical port fees. The Exchange currently charges for logical ports (including Multicast PITCH Spin Server and GRP ports) $500 per port per month. A logical port represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-Member and grants that Member or non-Member the ability to operate a specific application, such as FIX order entry or PITCH data receipt. The Exchange's Multicast PITCH data feed is available from two primary feeds, identified as the "A feed" and the "C feed", which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant feeds, identified as the "B feed" and the "D feed". Logical port fees are limited to logical ports in the Exchange's primary data center and no logical port fees are assessed for redundant secondary data center ports. The Exchange assesses the monthly per logical port fees to all Member's and non-Member's logical ports.

The Exchange proposes to clarify within its fee schedule how monthly fees for logical ports may be pro-rated. As proposed, new requests will be pro-rated for the first month of service. Cancellation requests are billed in full month increments as firms are required to pay for the service for the remainder of the month, unless the session is terminated within the first month of service.

Proposed Cross-Asset Tier

The Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's tiered pricing structure. Currently, the Exchange provides various rebates under Footnote 1 of the fee schedule for a Member dependent on the Member's ADV[6] as a percentage of the TCV[7] for orders that yield fee codes B, V, Y, 3, 4 and ZA. The Exchange currently has eight Add Volume Tiers. Under such pricing structure, a Member will receive a rebate of anywhere between $0.0025 and $0.0033 per share executed, depending on the volume tier for which such Member qualifies.

The Exchange now proposes to amend the Add Volume Tiers to adopt a new tier called the Cross-Asset Tier. Under the proposed tier, a Member would receive an enhanced rebate of $0.0028 per share where that: (i) Member has on the Exchange's equity options trading platform ("EDGX Options") an ADV[8] in Firm[9] orders equal to or greater than 0.10% of average TCV; and (2) Member has an ADAV[10] equal to or greater than 0.12% of average TCV. To accommodate this proposed change in its fee schedule, the Exchange proposes adding an additional row to the Add Volume Tier table under footnote 1 to list the Cross-Asset Tier. The Exchange proposes no changes to the criteria for the existing Add Volume Tiers.

In connection with adopting the above tier, the Exchange proposes to incorporate a definition of ADAV within the definition of ADV in its fee schedule.[11] ADAV would be defined as the average daily added volume calculated as the number of shares added per day. Like ADV, ADAV would be calculated on a monthly basis. Also like ADV, the Exchange will exclude from its calculation of ADAV shares added, removed, or routed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours ("Exchange System Disruption"), on any day with a scheduled early market close, and on the last Friday in June (the "Russell Reconstitution Day"). Lastly, with prior notice to the Exchange, a Member may aggregate ADAV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD) just like it may for ADV today.

Implementation Date

The Exchange proposes to implement this amendment to its fee schedule effective immediately.[12]

2. Statutory Basis

Logical Port Fee

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[13] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[14] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The proposed rule change seeks to provide clarity to subscribers regarding the Exchange's pro-rata billing policy for logical ports by describing how logical port fees may be pro-rated for a new request and upon cancellation. The Exchange believes that the proposed pro-rata billing of fees for logical ports is equitable and reasonable in that it is similar to how port fees are pro-rated by the Nasdaq Stock Market LLC ("Nasdaq").[15]

---

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] As defined in the Exchange's fee schedule *available at http://batstrading.com/support/fee_schedule/edgx/.*

[7] *Id.*

[8] As defined in the EDGX Options' fee schedule *available at http://www.batsoptions.com/support/fee_schedule/edgx/.*

[9] *Id.*

[10] As defined in the Exchange's fee schedule *available at http://batstrading.com/support/fee_schedule/edgx/.*

[11] The proposed definition of ADAV is substantially similar and functionally identical to the definition of ADAV included in the EDGX Options fee schedule. *See* the EDGX Options' fee schedule *available at http://www.batsoptions.com/support/fee_schedule/edgx/.*

[12] The Exchange initially filed the proposed fee change on July 29, 2016 (SR–BatsEDGX–2016–38). On August 5, 2016, the Exchange withdrew SR–BatsEDGX–2016–38 and submitted this filing.

[13] 15 U.S.C. 78f.

The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, an exchange charging excessive fees would stand to lose not only connectivity revenues, but also revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable and unequitable fees for connectivity.

Cross-Asset Tier

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[16] in general, and furthers the objectives of Section 6(b)(4),[17] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed amendments to the Add Volume Tier are equitable and non-discriminatory in they would apply uniformly to all Members. The Exchange believes the rate remains competitive with those charged by other venues and is, therefore, reasonable.

Volume-based rebates such as that proposed herein have been widely adopted by exchanges, including the Exchange, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposal is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the addition of the proposed Cross-Asset Tier is a reasonable means to encourage Members to increase the liquidity they provide on the Exchange. The addition of the tier merely incentivizes a Member to provide even greater liquidity. Currently, the Exchange's incentives to add such liquidity are separated by asset class. The proposed Cross-Asset Tier will incentivize Members to provide liquidity in two asset classes, both in EDGX equities and EDGX Options. The Exchange further believes that the amendment to the Add Volume Tiers represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tier continue to encourage Members to add displayed liquidity to the EDGX Book[18] and the EDGX Options Book[19] each month. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Such pricing programs thereby reward a Member's growth pattern on the Exchange and such increased volume increases potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. To the extent a Member participates on the Exchange but not on EDGX Options, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of EDGX Options. As noted above, such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on EDGX Options or not. The proposed pricing program is also fair and equitable in that membership in EDGX Options is available to all market participants which would provide them with access to the benefits on EDGX Options provided by the proposed changes, as described above, even where a member of EDGX Options is not necessarily eligible for the proposed increased rebates on the Exchange. Further, the proposed changes will result in Members receiving either the same or an increased rebate than they would currently receive.

Lastly, the Exchange believes the proposed definition of ADAV is also consistent with the Act as it is substantially similar and functionally identical to the definition of ADAV included in the EDGX Options fee schedule.[20]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendment to its fee schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange does not believe that the proposed additional tier would burden competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange. The Exchange does not believe the amended tier would burden intramarket competition as it would apply to all Members uniformly. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

---

[14] 15 U.S.C. 78f(b)(4).

[15] *See* Nasdaq Price List—Trade Connectivity *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#connectivity.* The Exchange notes that, unlike as proposed by the Exchange, Nasdaq does not pro-rate where the session is terminated within the first month of service.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

[18] The EDGX Book is the System's electronic file of orders. *See* Exchange Rule 1.5(d).

[19] The EDGX Options Book is the electronic book of options orders maintained by the Trading System. *See* Exchange Rule 16.1(a)(9).

[20] *See* the EDGX Options' fee schedule *available at http://www.batsoptions.com/support/fee_schedule/edgx/.*

With regard to the proposed logical port fee amendment, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including logical port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Members and non-Members equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and paragraph (f) of Rule 19b–4 thereunder.[22] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGX–2016–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGX–2016–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–42, and should be submitted on or before September 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19444 Filed 8–15–16; 8:45 am]

BILLING CODE 8011–01–P

---

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78531; File No. SR–CBOE–2016–046]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Expand the Nonstandard Expirations Pilot Program To Include Monday Expirations

August 10, 2016.

I. Introduction

On June 14, 2016, Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the End of Week/End of Month Pilot Program to permit P.M.-settled options on broad-based indexes to expire on any Monday of the month. The proposed rule change was published for comment in the **Federal Register** on June 28, 2016.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

CBOE proposes to expand its existing Nonstandard Expirations Pilot Program (the "Pilot").[4] Under the terms of the current Pilot, the Exchange is permitted to list P.M.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday-of-the-month ("EOW"), (b) the last trading day of the month ("EOM"), and (c) any Wednesday of the month, other than a Wednesday that coincides with an EOM ("WED").[5] Under the proposal, the Exchange will expand the Pilot to permit P.M.-settled options on broad-based indexes to expire on any Monday of the month other than Mondays that coincide with an EOM ("Monday Expirations"). The Exchange also proposes to reorganize the rules relating to existing EOW and WED expirations together with the proposed Monday Expirations into a new category called "Weekly Expirations."[6]

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78132 (June 22, 2016), 81 FR 42018 (June 28, 2016) ("Notice").

[4] *See* Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (order approving SR–CBOE–2009–075) ("Pilot Approval Order"). *See also* Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (SR–CBOE–2015–106) (order approving an expansion and extension of the Pilot) ("WED Approval Order"). The Pilot is currently set to expire on May 3, 2017. *See id.*

[5] EOWs, EOMs, and WEDs are permitted on any broad-based index that is eligible for regular options trading. EOWs, EOMs, and WEDs are cash-settled expirations with European-style exercise, and are subject to the same rules that govern the trading of standard index options. *See* CBOE Rule 24.9(e).

A. Monday Expirations

The Exchange's proposed rule change will allow it to open for trading Monday Expirations on any broad-based index eligible for standard options trading to expire on any Monday of the month, other than a Monday that is EOM.[7] Monday Expirations will be treated the same as options on the same underlying index that expire on the third Friday of the expiration month, except that they will be P.M.-settled,[8] and will be subject to the same rules that currently govern the trading of traditional index options, including sales practice rules, margin requirements, and floor trading procedures.[9] In addition, Monday Expirations on the same broad-based index will be aggregated with option contracts on the same broad-based index for position limits, if any, and any applicable reporting and other requirements.[10] Contract terms for Monday Expirations will be similar to the current EOWs and WEDs, as described below.[11]

B. Weekly Expirations

The proposal would eliminate the designations "EOW" and "WED" but preserve the existing concepts of EOWs and WEDs by combining them with the proposed Monday Expirations into a new category, Weekly Expirations. The maximum number of expirations that may be listed for Weekly Expirations (including the proposed Monday Expirations) is the same as the maximum number of expirations permitted in CBOE Rule 24.9(a)(2) for standard options on the same broad-based index, and CBOE proposes that other expirations in the same class will not be counted as part of the maximum number of Weekly Expirations expirations for a particular broad-based index class.[12] Other than expirations that coincide with an EOM expiration, CBOE's proposed rule will require that Weekly Expirations (including the proposed Monday Expirations) expire on consecutive Mondays, Wednesdays, or Fridays, as applicable.[13] Further, a new group of Weekly Expirations (including the proposed Monday Expirations) that are first listed in a given class may begin with an initial expiration up to four weeks from the date that CBOE first lists the group.[14]

With respect to listing, if the last trading day of a month falls on a day on which the exchange would normally list an EOM and a Weekly Expiration (including the proposed Monday Expirations), the Exchange will list an EOM and not a Weekly Expiration.[15]

Finally, the exchange proposes to address the expiration of Weekly Expirations on days that the Exchange is not open for business: If the exchange is not open for business on a respective Monday, the normally Monday-expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Wednesday or Friday, the normally Wednesday- or Friday-expiring Weekly Expirations will expire on the previous business day.[16]

C. Annual Pilot Program Report

The Exchange has previously undertaken to submit a Pilot report to the Commission at least two months prior to the expiration date of the Pilot (the "Annual Report"). The Exchange represents that it will expand the Annual Report to provide the same data and analysis related to the proposed Monday Expirations (encompassed by the proposed Weekly Expirations category) as is currently provided for EOW, EOM, and WED expirations.[17]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[18] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[19] which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission has had concerns about the adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash market at or near the close of trading. Only in limited instances has the Commission previously approved P.M. settlement for cash-settled options. In addition to approving the original Pilot[20] and expanding it to include WEDs,[21] in 1993, the Commission approved CBOE's listing of P.M.-settled, cash-settled options on certain broad-based indexes expiring on the first business day of the month following the end of each calendar quarter.[22] In 2010, the Commission approved CBOE's listing of P.M.-settled FLEX options on a pilot basis.[23] The Commission also approved the listing of P.M.-settled SPX index options on a pilot basis.[24]

The Commission believes that it is appropriate to approve the Monday Expirations proposal (as encompassed by the proposed Weekly Expirations category) on a pilot basis in order to allow the Exchange to gain experience with the new Monday Expirations and collect data concerning Monday

---

[6] The Exchange also proposes conforming changes to CBOE Rule 24.9(e)(2), which the Exchange represents are non-substantive in nature. *See* Notice, *supra* note 3, at n. 6.

[7] *See* proposed CBOE Rule 24.9(e)(1).

[8] *See id.*

[9] *See* Notice, *supra* note 3, at 42019.

[10] *See* proposed CBOE Rule 24.4(b).

[11] *See* Notice, *supra* note 3, at 42019.

[12] *See* proposed CBOE Rule 24.9(e)(1).

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] *See* Notice, *supra* note 3, at 42020–21.

[18] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Pilot Approval Order, *supra* note 4.

[21] *See* WED Approval Order, *supra* note 4.

[22] *See* Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR–CBOE–92–13). In 2006, CBOE implemented, on a pilot basis, listing of P.M.-settled index options expiring on the last business day of a calendar quarter. *See* Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR–CBOE–2006–65).

[23] *See* Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087).

[24] The Commission initially approved P.M.-settled SPX index options ("SPXPM") on a 14-month pilot basis (the "SPXPM Pilot") on C2 Options Exchange, Incorporated ("C2"). *See* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR–C2–2011–008). The SPXPM Pilot was subsequently transferred from C2 to CBOE and reset to a new 12-month pilot period. *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR–CBOE–2012–120). In 2013, the Commission approved the addition of P.M.-settled mini-SPX index options to the SPXPM Pilot and the pilot's extension. *See* Securities Exchange Act Release No. 70087 (July 31, 2013), 78 FR 47809 (August 6, 2013) (SR–CBOE–2013–055).

Expirations. The addition of Monday Expirations would offer additional investment options to investors and may be useful for their investment or hedging objectives, including the ability to hedge over-the-weekend risk. The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series that may burden some liquidity providers and further stress options quotation and transaction infrastructure. Further, including the new Monday Expirations in the Pilot should allow for both the Exchange and the Commission to continue monitoring the potential for adverse market effects of P.M. settlement on the market, including the underlying cash equities markets at the expiration of these options.

The Commission notes that CBOE will provide the Commission with the Annual Report analyzing volume and open interest of EOMs and Weekly Expirations (including the proposed Monday Expirations), which will also contain information and analysis of EOMs and Weekly Expirations trading patterns and index price volatility and share trading activity for series that exceed minimum parameters. This information should be useful to the Commission as it evaluates whether allowing P.M. settlement for EOMs and Weekly Expirations has resulted in increased market and price volatility in the underlying component stocks, particularly at expiration. The Pilot information should help the Commission and CBOE assess the impact on the markets and determine whether changes to these programs are necessary or appropriate. Furthermore, the Exchange's ongoing analysis of the Pilot should help it monitor any potential risks from large P.M.-settled positions and take appropriate action if warranted.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–CBOE–2016–046) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19441 Filed 8–15–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Meeting of the Advisory Committee on Veterans Business Affairs

AGENCY: U.S. Small Business Administration

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the loation, date, time and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

DATES: Wednesday, September 16, 2016, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, Eisenhower Conference room, side B, located on the concourse level.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs (ACVBA). The ACVBA serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration. The purpose of this meeting is to discuss the formation and growth of small business concerns owned and controlled by veterans and service disable-veterans and to focus on strategic planning and provide updates on past and current events.

Additional Information: This meeting is open to the public. Advance notice of attendance is requested. Anyone wishing to attend and/or make comments to the Advisory Committee contact the Office of Veterans Business Development no later than September 9, 2016 at *vetstaskforce@sba.gov.* Comments will be limited to five minutes in the interest of time and to accommodate as many participants as possible. Written comments should also be sent to the above email no later than September 9, 2016. Special accomodations requests should also be directed to the Office of Veterans Business Development at (202) 205–6773 or above email. For more information on veteran owned small business programs, please visit *www.sba.gov/vets.*

Dated: August 2, 2016.

Miguel J. L'Heureux,

SBA Committee Management Officer.

[FR Doc. 2016–19488 Filed 8–15–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Meeting of the Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration

ACTION: Notice of open Federal Interagency Task Force Meeting.

SUMMARY: The SBA is issuing this notice to announce the loation, date, time and agenda for the next meeting of the Interagency Task Force on Veterans Small Business Development. The meeting will be open to the public.

DATES: *Date and Time:* Thursday, September 15, 2016, from 9:00 a.m. to 12:00 noon.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

Where: Eisenhower Conference room, side b, located on the Concourse level.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development. The Task Force is established pursuant to Executive Order 13540 and focused on coordinating and pre-established Federal contracting goals for small business concers owned and controlled by veterans and service-disabled veterans. Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to "six focus areas": (1) Access to capital (loans, surety bonding and franchising); (2) Ensure achievement of pre-established contracting goals, including mentor protégé and matching with contracting opportunities; (3) Increase the integrity of certifications of status as a small business; (4) Reducing paperwork and administrative burdens in accessing business development and entrepreneurship opportunities; (5) Increasing and improving training and counseling services; and (6) Making other improvements to support veteran business development by the Federal government.

Additional Information: This meeting is open to the public. Advance notice of attendance is requested. Anyone wishing to attend and/or make comments to the Task Force must contact the Office of Veterans Business Development no later than September 9, 2016 at *vetstaskforce@sba.gov.* Comments for the record should be applicable to the "six focus areas" of the Task Force and will be limited to five minutes in the interest of time and to accommodate as many participants as possible. Written comments should also be sent to the above email no later than September 9, 2016. Special accomodations requests should also be directed to the Office of Veterans Business Development at (202) 205–6773 or above email. For more information on veteran owned small business programs, please visit *www.sba.gov/vets.*

---

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

Dated: August 2, 2016.

Miguel J. L'Heureux,

SBA Committee Management Officer.

[FR Doc. 2016–19489 Filed 8–15–16; 8:45 am]

BILLING CODE P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO).

DATES: If you want to testify at the hearing, you must provide written notification and a summary of your testimony by Wednesday, September 21, 2016. Written comments also are due by Wednesday, September 21, 2016. A hearing will be held in Washington DC on Wednesday, October 5, 2016.

ADDRESSES: You should submit notifications of intent to testify and written comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in part 3 below. For alternatives to on-line submissions, please contact Yvonne Jamison, Trade Policy Staff Committee, at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Yvonne Jamison at (202) 395–3475. Direct all other questions to Terrence J. McCartin, Deputy Assistant United States Trade Representative for China Enforcement, at (202) 395–3900, or Philip D. Chen, Chief Counsel for China Enforcement, at (202) 395–3150.

SUPPLEMENTARY INFORMATION:

1. Background

China became a Member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is soliciting public comments. Last year's report is available on USTR's Web site: *https://ustr.gov/sites/default/files/2015-Report-to-Congress-China-WTO-Compliance.pdf.*

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO agreements. The Protocol and Working Party Report can be found on the WTO Web site: *http://docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas:

a. Trading rights;

b. import regulation (*e.g.,* tariffs, tariff-rate quotas, quotas, import licenses);

c. export regulation;

d. internal policies affecting trade (*e.g.,* subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports);

e. intellectual property rights (including intellectual property rights enforcement);

f. services;

g. rule of law issues (*e.g.,* transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and

h. other WTO commitments.

In addition, given the United States' view that China should be held accountable as a full participant in, and beneficiary of, the international trading system, USTR requests that interested persons specifically identify unresolved compliance issues that warrant review and evaluation by USTR's China Enforcement Task Force.

You must submit written comments no later than Wednesday, September 21, 2016.

A hearing will be held on Wednesday, October 5, 2016, in Room 1, 1724 F Street NW., Washington DC 20508. If necessary, the hearing will continue on the next business day. Persons wishing to testify orally at the hearing must provide written notification of their intention by Wednesday, September 21, 2016. The intent to testify notification must be made in the "Type Comment" field under docket number USTR–2016–0012 on the *regulations.gov* Web site and should include the name, address and telephone number of the person presenting the testimony. You should attach a summary of the testimony by using the "Upload File" field. The name of the file also should include who will be presenting the testimony. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

You should submit all documents in accordance with the instructions in section 3 below.

3. Requirements for Submissions

Persons submitting a notification of intent to testify and/or written comments must do so in English and must identify (on the first page of the submission) "China's WTO Compliance."

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2016–0012 on the home page and click "search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled "Comment Now!" (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The *www.regulations.gov* Web site allows users to provide comments by filling in a "Type Comment" field, or by attaching a document using an "Upload File" field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type

Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in a different application, please indicate the name of the application in the ''Type Comment'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P.'' The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted above, USTR strongly urges submitters to file comments through *www.regulations.gov.* Any alternative arrangements must be made with Yvonne Jamison in advance of transmitting the comments. You can contact Ms. Jamison at (202) 395–3475. General information concerning USTR is available at *www.ustr.gov.*

Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the *www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Edward Gresser,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2016–19413 Filed 8–15–16; 8:45 am]

BILLING CODE 3290–F6–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Enterprise Municipal Airport, Enterprise, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA proposes to rule and invites comment on the release of 0.7± acres of airport property at Enterprise Municipal Airport, Enterprise, Alabama, under the provisions of Title 49, U.S.C. Section 47107(h)(2).

DATES: Comments must be received on or before September 15, 2016.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, Attn: Luke Flowers, Program Manager, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Kenneth W. Boswell, Mayor, City of Enterprise at the following address: Post Office Box 311000, Enterprise, AL 36331–1000.

FOR FURTHER INFORMATION CONTACT: Luke Flowers, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9898. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 0.7± acres of airport property at Enterprise Municipal Airport (EDN) under the provisions of 49 U.S.C. 47107(h)(2). The FAA determined that the request to release property at Enterprise Municipal Airport (EDN) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Enterprise Municipal Airport (EDN) is proposing the release of airport property totaling 0.7 acres, more or less. This land is to be used by City of Enterprise for construction of a municipal fire station. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at Enterprise Municipal Airport (EDN) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at Enterprise Municipal Airport. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Enterprise Municipal Airport.

Issued in Jackson, Mississippi on August 8, 2016.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 2016–19520 Filed 8–15–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 225, Rechargeable Lithium Battery and Battery Systems, Twenty Fifth Meeting

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: RTCA Special Committee 225, Rechargeable Lithium Battery and Battery Systems, twenty fifth meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 225, Rechargeable Lithium Battery and Battery Systems, twenty fifth meeting.

DATES: The meeting will be held September 8, 2016, 09:00 a.m.–5:00 p.m. EDT

ADDRESSES: The meeting will be held at: *https://rtca.webex.com/rtca/j.php?MTID=m5de7f61dd5619499567727 1e9ad59931.*

Meeting number: 638 848 815.

Meeting password: Batteries1.

Join by phone:

1–877–668–4493 Call-in toll-free number (US/Canada).

1–650–479–3208 Call-in toll number (US/Canada).

Access code: 636 711 821.

FOR FURTHER INFORMATION CONTACT: Jennifer Iversen at *jiversen@rtca.org* or (202) 330–0662, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the RTCA Special Committee 225, Rechargeable Lithium Battery and Battery Systems, twenty fifth meeting. The agenda will include the following:

Thursday, September 8, 2016 (Virtual)

1. Introductions and administrative items (including DFO & RTCA Statement) (15 min)
2. Review agenda (5 min)
3. Review and approve summary from the last Plenary (10 min)
4. Discuss Multi-Cell Thermal Runaway and associated tests and remove duplication (3.5 hours)
5. Lunch (1:00 p.m. EDT—1 hour)
6. Discuss Multi-Cell Thermal Runaway and associated tests and remove duplication (2 hours)
7. Final review of document including: (30 min)
   - —Document reformat
   - —Requirements (section 2.2)
   - —Test Procedures (section 2.4)
8. Approve document for Final Review and Comment (FRAC) (15 min)
9. Establish Agenda, location, and time for next Plenary (15 min)
10. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 10, 2016.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17 NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2016–19421 Filed 8–15–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2016–0003]

Surface Transportation Project Delivery Program; TxDOT Audit Report

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Surface Transportation Project Delivery Program (23 U.S.C. 327) allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal-aid highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. Prior to the Fixing America's Surface Transportation (FAST) Act of 2015, the program required semiannual audits during each of the first 2 years of State participation to ensure compliance by each State participating in the program. This notice presents the findings of the second audit report for the Texas Department of Transportation's (TxDOT) participation in accordance to these pre-FAST Act requirements.

FOR FURTHER INFORMATION CONTACT: Dr. Owen Lindauer, Office of Project Development and Environmental Review, (202) 366–2655, *owen.lindauer@dot.gov,* or Mr. Alan Strasser, Office of the Chief Counsel, (202) 366–1373, *alan.strasser@dot.gov,* Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program (or NEPA Assignment Program) allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal-aid highway projects (23 U.S.C. 327). When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The TxDOT published its application for assumption under the National Environmental Policy Act (NEPA) Assignment Program on March 14, 2014, at Texas Register 39(11): 1992, and made it available for public comment for 30 days. After considering public comments, TxDOT submitted its application to FHWA on May 29, 2014. The application served as the basis for developing the Memorandum of Understanding (MOU) that identifies the responsibilities and obligations TxDOT would assume. The FHWA published a notice of the draft of the MOU in the **Federal Register** on October 10, 2014, at 79 FR 61370 with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period FHWA and TxDOT considered comments and proceeded to execute the MOU. Since December 16, 2014, TxDOT has assumed FHWA's responsibilities under NEPA, and the responsibilities for the NEPA-related Federal environmental laws.

Prior to December 4, 2015, 23 U.S.C. 327(g) required the Secretary to conduct semiannual audits during each of the first 2 years of State participation, and annual audits during each subsequent year of State participation to ensure compliance by each State participating in the program. The results of each audit were required to be presented in the form of an audit report and be made available for public comment. On December 4, 2015, the President signed into law the FAST Act (Pub. L. 114–94, 129 Stat. 1312 (2015)). Section 1308 of the FAST Act amended the audit provisions by limiting the number of audits to one audit each year during the first 4 years of a State's participation. However, FHWA had already conducted the second audit in September 2015 regarding TxDOT's program participation. The FHWA received one response from the TxDOT as a result of the public notice of the draft report and has considered the TxDOT comments in finalizing this audit report. The TxDOT's comments reflect actions it has taken in response to the report's observations. Only one comment has resulted in a non-substantial change in this report. This notice provides the final draft of the report for second audit for TxDOT conducted prior to the FAST Act.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C. 327; 49 CFR 1.48.

Issued on: August 8, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program

FHWA Audit #2 of the Texas Department of Transportation June 16, 2015 through December 16, 2015

Executive Summary

This report summarizes the results of Audit #2 of the performance by the Texas Department of Transportation (TxDOT) regarding its assumption of responsibilities and obligations, as assigned by Federal Highway Administration (FHWA) under a memorandum of understanding (MOU) whose term began on December 16, 2014. From that date, TxDOT assumed FHWA National Environmental Policy Act (NEPA) responsibilities and liabilities for the environmental review and compliance for highway projects that require a Federal action in Texas (NEPA Assignment Program). The FHWA's role in the NEPA Assignment Program in Texas includes program review through audits, as specified in 23 U.S.C. 327 and in the MOU. The status of the Audit #1 observations (including any implemented corrective actions) is detailed at the end of this report.

The FHWA Audit #2 team (team) was formed in June 2015 and met regularly to prepare for the on-site portion of the audit. Prior to the on-site visit, the team: (1) performed reviews of TxDOT project file NEPA documentation in TxDOT's Environmental Compliance Oversight System (ECOS), (2) examined the TxDOT pre-Audit #2 information request responses, and (3) developed interview questions. The on-site portion of this audit, comprised of TxDOT and other agency interviews, was conducted September 8–9, 2015, and September 20–25, 2015.

The TxDOT continues to make progress developing, revising, and implementing procedures and processes required to implement the NEPA Assignment Program. Overall, the team found evidence that TxDOT is committed to establishing a successful program. This report summarizes the team's assessment of the current status of several aspects of the NEPA Assignment Program, including successful practices and 17 total observations that represent opportunities for TxDOT to improve its program. The team identified three non-compliance observations that TxDOT will need to address as corrective actions in its next self-assessment and subsequent report.

While TxDOT has continued to make progress toward meeting all the responsibilities it has assumed in accordance with the MOU, the recurring non-compliance observations require corrective action by TxDOT. By taking corrective action and considering changes based on the observations in this report, TxDOT will continue to move the program toward success.

Background

The Surface Transportation Project Delivery Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. This program is codified at 23 U.S.C. 327. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the obligations it has assumed, in lieu of FHWA.

The State of Texas was assigned the responsibility for making project NEPA and other related environmental decisions for highway projects on December 16, 2014. In enacting Texas Transportation Code, § 201.6035, the State has waived its sovereign immunity under the 11th Amendment of the U.S. Constitution and consents to defend any actions brought by its citizens for NEPA decisions it has made in Federal court.

The FHWA responsibilities assigned to TxDOT are varied and tied to project level decisionmaking. These laws include, but are not limited to, the Endangered Species Act (ESA), Section 7 consultations with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration National Marine Fisheries Service, and Section 106 consultations regarding impacts to historic properties. Two Federal responsibilities were not assigned to TxDOT and remain with FHWA: (1) making project-level conformity determinations under the Federal Clean Air Act and (2) conducting government-to-government consultation with federally recognized Indian tribes.

Prior to December 4, 2015, FHWA was required to conduct semiannual audits during each of the first 2 years of State participation in the program and audits annually for 2 subsequent years as part of FHWA's oversight responsibility for the NEPA Assignment Program. The reviews assess a State's compliance with the provisions of the MOU and all applicable Federal laws and policies. They also are used: to evaluate a State's progress toward achieving its performance measures as specified in the MOU; to evaluate the success of the NEPA Assignment Program; and to inform the administration of the NEPA Assignment Program. On December 4, 2015, the President signed into law the Fixing America's Surface Transportation (FAST) Act of 2015, which amended the audit provisions of the program by changing the frequency to one audit per year during the first 4 years of the State's participation. However, this audit was conducted prior to the passage of the FAST Act, and this report is being prepared and made available under the audit provisions as they existed prior to the passage of the FAST Act. This report summarizes the results of the second audit, and updates the reader on the status and corrective actions for the results of the first audit.

Scope and Methodology

The overall scope of this audit review is defined both in statute (23 U.S.C. 327) and the MOU (Part 11). An audit generally is defined as an official and careful examination and verification of accounts and records, especially of financial accounts, by an independent unbiased body. With regard to accounts or financial records, audits may follow a prescribed process or methodology, and be conducted by "auditors" who have special training in those processes or methods. The FHWA considers this review to meet the definition of an audit because it is an unbiased, independent, official, and careful examination and verification of records and information about TxDOT's assumption of environmental responsibilities. The team that conducted this audit has completed special training in audit processes and methods.

The diverse composition of the team, the process of developing the review report, and publishing it in the **Federal Register** help ensure an unbiased audit process and establish the audit as an official action taken by FHWA. The team for Audit #2 included NEPA subject matter experts from the FHWA Texas Division Office and FHWA offices in Washington, DC, Atlanta, GA, Columbus, OH, and Salt Lake City, UT. In addition, the team included an FHWA Professional Development Program trainee from the Texas Division office and one individual from FHWA's Program Management Improvement Team who provided technical assistance in conducting reviews.

Audits, as stated in the MOU (Parts 11.1.1 and 11.1.5), are the primary mechanism used by FHWA to oversee TxDOT's compliance with the MOU, ensure compliance with applicable Federal laws and policies, evaluate TxDOT's progress toward achieving the performance measures identified in the MOU (Part 10.2), and collect information needed for the Secretary's annual report to Congress. These audits also must be designed and conducted to evaluate TxDOT's technical competency and organizational capacity, adequacy of the financial resources committed by TxDOT to administer the responsibilities assumed, quality assurance/quality control (QA/QC) process, attainment of performance measures, compliance with the MOU requirements, and compliance with applicable laws and policies in administering the responsibilities assumed. The four performance measures identified in the MOU are: (1) compliance with NEPA and other Federal environmental statutes and regulations, (2) QC and QA for NEPA decisions, (3) relationships with agencies and the general public, and (4) increased efficiency, timeliness, in the completion of the NEPA process.

The scope of this audit included reviewing the processes and procedures used by TxDOT to reach and document project decisions. The team conducted a careful examination of highway project files and verified information on the TxDOT NEPA Assignment Program through inspection of other records and through interviews of TxDOT and other staff. The team gathered information that served as the basis for this audit from three primary sources: (1) TxDOT's response to a pre-Audit #2 information request, (2) a review of a random sample of project files with approval dates subsequent to the execution of the MOU, and (3) interviews with TxDOT, the U.S. Army Corps of Engineers (USACE), and the U.S. Coast Guard (USCG) staff. The TxDOT provided information in response to FHWA questions and requests for all relevant reference material. That material covered the following six topics: (1) program management, (2) documentation and records management, (3) QA/QC, (4) legal sufficiency review, (5) performance measurement, and (6) training. The team subdivided into working groups that focused on each of the six topics.

The intent of the review was to check that TxDOT has the proper procedures in place to implement the MOU responsibilities assumed, ensure that the staff is aware of those procedures, and that staff implement the procedures appropriately to achieve NEPA compliance. The review is not intended to evaluate project-specific decisions, or to second guess those decisions, as these decisions are the sole responsibility of TxDOT.

The team defined the timeframe for highway project environmental approvals subject to this second audit to be between March 2015 and June 2015. The focus on the second review included the 3 to 4 months after FHWA's audit #1 highway project file review concluded. The second audit intended to: (1) evaluate whether TxDOT's NEPA decisionmaking and other actions comply with all the responsibilities it assumed in the MOU, and (2) determine the current status of observations in the Audit #1 report and required corrective actions (see summary at end of this report). The team established a population of 598 projects subject to review based on lists of NEPA approvals (certified compliant by TxDOT as required in MOU Part 8.7.1) reported monthly by TxDOT. The NEPA approvals included categorical exclusion (CE) determinations, 47 other types of environmental approvals including approvals to circulate an environmental assessment (EA), findings of no significant impacts (FONSI), re-evaluations of EAs, Section 4(f) decisions, approvals of a draft environmental impact statement (EIS), and a record of decision (ROD). In order to attain a sample with a 95 percent confidence interval, the team randomly selected 83 CE projects. In addition, the team reviewed project files for all 47 approvals that were not CEs. The sample reviewed by the team was 130 approval actions.

The interviews conducted by the team focused on TxDOT's leadership and staff at Environmental Affairs Division (ENV) Headquarters in Austin and nine TxDOT Districts. To complete the interviews of District staff, the team divided into three groups of four to conduct face-to-face interviews at TxDOT Districts in Dallas, Paris, Tyler, Lubbock, Childress, Amarillo, Houston, Beaumont, and Bryan. With these interviews completed, FHWA has interviewed staff from 60 percent (15 of 25) of the TxDOT District offices. The FHWA anticipates interviewing staff from the remaining TxDOT District offices over the next year.

Overall Audit Opinion

The team recognizes that TxDOT is still implementing changes to address and improve its NEPA Assignment Program and that its programs, policies, and procedures may need revision. The TxDOT's efforts are appropriately focused on establishing and refining policies and procedures (especially in regards to the non-compliance observations made by FHWA), training staff, assigning and clarifying changed roles and responsibilities, and monitoring its compliance with assumed responsibilities. The team has determined that TxDOT continues to make reasonable progress despite some noted delays (pending ECOS upgrades) as the program matures beyond the start-up phase of NEPA Assignment operations. In addition, the team believes TxDOT is committed to establishing a successful program. The team's analysis of project file documentation and interview information identified several non-compliance observations, and several other observations including evidence of good practice. One non-compliance observation is recurrent from Audit #1, relating to "conditional clearances," that appears to reflect a misunderstanding on the part of TxDOT on when and whether information at hand is sufficient to support a NEPA decision that complies with the requirements of the MOU. This is a point of concern for FHWA and if necessary, this issue will be a focus of future audits.

The TxDOT staff and management have engaged FHWA and have received constructive feedback from the team to revise TxDOT's standard operating procedures. By considering and acting upon the observations contained in this report, TxDOT should continue to improve upon carrying out its assigned responsibilities to ensure the success of its NEPA Assignment Program.

Non-Compliance Observations

AUDIT #2

Non-compliance observations are instances where the team found the State was out of compliance or deficient with regard to a Federal regulation, statute, guidance, policy, or the terms of the MOU (including State procedures for compliance with the NEPA process). Such observations may also include instances where the State has failed to maintain adequate personnel and/or financial resources to carry out the responsibilities assumed. Other observations that suggest a persistent failure to adequately consult, coordinate, or take into account the concerns of other Federal, State, tribal, or local agencies with oversight, consultation, or coordination responsibilities could be non-compliant. The FHWA expects TxDOT to develop and implement corrective actions to address all non-compliance observations as soon as possible. The TxDOT has already informed the team it is implementing some recommendations made by FHWA to address non-compliance and other observations. The FHWA will conduct follow up reviews of the non-compliance observations as part of Audit #3, and if necessary, future audits.

The MOU (Part 3.1.1) states "pursuant to 23 U.S.C. 327(a)(2)(A), on the Effective Date, FHWA assigns, and TxDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the DOT Secretary's responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* with respect to the highway projects specified under subpart 3.3. This includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for Federal highway projects such as 23 U.S.C. 139, 40 CFR parts 1500–1508, DOT Order 5610.1C, and 23 CFR part 771 as applicable.'' Also, the performance measure in MOU Part 10.2.1(A) for compliance with NEPA and other Federal environmental statutes and regulations commits TxDOT to maintaining *documented compliance* with requirements of all applicable statutes, regulations, procedures, and processes set forth in the MOU. The following non-compliance observations were found by the team based on documentation (or lack thereof) in project files and other documentation.

Audit #2 Non-Compliance Observation #1

Non-compliance Observation #1 is an instance (1 out of 130 actions reviewed) where TxDOT made a CE determination for a project before all regulatory criteria for a CE determination were met. The TxDOT followed a State procedure relating to the NEPA approval subject to ''conditional clearances'' that allowed the project to proceed to construction. Audit #1 Non-compliance Observation #2 also was an instance where a CE determination was made by TxDOT staff before all environmental requirements had been satisfied (*i.e.,* project level air quality conformity and listing in the Statewide Transportation Improvement Program (STIP)) following the same TxDOT procedure. Discovery of this second instance of non-compliance tied to conditional clearance approvals triggered additional requests for information by the team and gathering information through informal interviews.

The Non-compliance Observation was that an ECOS project record showed that a TxDOT decisionmaker made a CE determination decision before the consultation for the project was completed. The completion of the consultation would have confirmed that a required constraint for the CE was met. This instance involved the determination of whether a project qualified for CE (c)(26). The FHWA's regulation at 23 CFR 771.117(c)(26) restricts the use of the CE to projects that meet all the constraints in 23 CFR 771.117(e). The constraint in 23 CFR 771.117(e)(3) prohibits the use of the CE if it involves a finding of ''adverse effect'' to a historic property or the use of a resource protected under Section 4(f), except for actions resulting in de minimis impacts. The ECOS record shows that at the time of the CE determination, these impacts were presumed, but consultation was not yet initiated in writing nor documented as completed such that the application of that CE could be justified. Later in time, after the CE determination was used to allow the project to proceed to a point where TxDOT made a request to FHWA to proceed to construction with Federal funding, the project record contained Texas Historical Commission (THC) concurrence that the effect was not adverse, and that a de minimis impact determination was supported. The TxDOT should not have applied a CE to a project before confirming that all conditions and constraints for use of that CE were met. By proceeding in this manner, TxDOT has not complied with the requirements for use of that CE, as specified in regulation. Also, the actions taken by TxDOT that lead to the ''conditional clearance'' do not comply with FHWA's Section 4(f) regulation, 23 CFR 774, where the CE determination was made when outcome of the Section 4(f) impact was not determined.

At the team's request for additional information on projects processed with ''conditional clearances,'' TxDOT provided a list of 18 projects that included the non-compliant project identified in Audit #1 and described above. Eight project files showed documentation that a CE determination was made before the period for tribal consultation was complete. The TxDOT, FHWA, and Indian Tribes with an interest in Texas have executed programmatic agreements that define for which projects TxDOT would consult and the manner of consultation. Those agreements commit TxDOT to send information to a Tribe and allow for a 30-day period for the Tribe to respond. If the Tribe does not respond after the 30 days, TxDOT may proceed to the next step of the process. These agreements commit TxDOT and FHWA to a manner of consultation that was not followed for eight projects. The TxDOT's assumption of FHWA's NEPA responsibilities does not permit TxDOT to disregard commitments it has made (along with FHWA) to complete tribal consultation before moving to the next step (making a CE determination). These actions are a violation of MOU Part 5.1.1 where TxDOT is subject to the same procedural and substantive requirements in interagency agreements, such as programmatic agreements. Additionally, TxDOT's completion of NEPA decisionmaking prior to completing tribal consultation violates MOU Part 7.2.1 where TxDOT has committed to ensure that it has processes and procedures in place that provide for proactive and timely consultation to carry out responsibilities assumed under the MOU.

The TxDOT has a Standard Operating Procedure (SOP) for issuing a Letter of Authority (LOA) dated April 1, 2015, that enables the project to proceed to the next step in project development after a decisionmaker has made a NEPA decision based on incomplete information. Issuance of a LOA allows a project to proceed to the bidding process. For the 18 projects in the list provided, TxDOT certified to FHWA that the project's NEPA requirements were satisfied. The TxDOT has noted in the project record that the project was ''conditionally cleared'' for letting. Upon review, the team identified 11 projects of the 18 reviewed that did violate MOU Part 8.7.1 because the NEPA certification included projects that either did not conform to required conditions to apply CEs or did not complete required consultation requirements. Also, TxDOT's SOP for issuing a LOA does not comply with MOU Part 5.2.1 in that TxDOT's procedures did not result in compliance with Federal regulations. The remaining 7 projects on the list of 18 ''conditional clearance'' projects advanced by TxDOT did not indicate an instance of an unjustified NEPA approval, but rather were for actions that occurred post-NEPA approval (*e.g.,* 404 permit issuance, Interstate Access Justification, and right-of-way (ROW) purchase).

As a result, FHWA has asked that TxDOT immediately refrain from issuing LOAs based on ''conditional clearances.'' The TxDOT has begun the process of revising the subject SOP. The FHWA will review the SOP to ensure that it satisfactorily complies with FHWA policy and the MOU. In addition, FHWA has requested that TxDOT report any projects that use the revised SOP to FHWA in advance of FHWA project authorization until further notice.

Audit #2 Non-Compliance Observation #2

Two projects reviewed by the team were in error regarding NEPA decision reporting. The MOU Part 8.2.6 requires the listing of any approvals and decisions made. One CE determination was reported to FHWA as an action that would utilize less than $5 million of Federal funds (CE (c)(23)) where the project file listed the CE determination for an action that would take place entirely within the existing operational ROW (CE (c)(22)). A second project was correctly reported on the monthly list, but a review of the project file lacked documentation for this determination. Even though these may result from data entry errors, TxDOT should make every effort to ensure the decisions it reports monthly are accurate and project files are complete.

Audit #2 Non-Compliance Observation #3

Twelve project file records were missing information that appeared to be out of compliance with TxDOT's procedures or documentation policy. One project's CE Determination Form did not identify the approver's title. Another project file lacked the Public Involvement summary. Nine project files lacked records, or included forms that lacked signatures where TxDOT procedures indicated that signatures were required. These included signatures on a Biological Evaluation form, Project Coordination Request form, and a Public Hearing Certification. One project file noted a public involvement process, but the event lacked documentation on what was presented. The implication of the TxDOT procedure is that the signature or information on the form is part of the review and approval of the report or form. Project files with missing information may suggest that a NEPA decision was based on incomplete or ambiguous information. The TxDOT has informed FHWA that it will review the files for these projects and take corrective action.

Observations and Successful Practices

This section summarizes the team's observations about issues or practices that TxDOT may want to consider as areas to improve and practices the team believes are successful that TxDOT may want to continue or expand in some manner. Further information on these observations and practices is contained in the following subsections that address the six topic areas identified in FHWA's team charter and work plan to perform this audit.

Throughout the following subsections, the team lists 14 remaining observations that FHWA urges TxDOT to act upon in order to make improvements. The FHWA's suggested methods of action include: corrective action, targeted training, revising procedures, continued self-assessment, or some other means. The team acknowledges that, by sharing this draft audit report with TxDOT, TxDOT has the opportunity to begin the process of implementing actions to address the observations to improve its program prior to the publication of this report. The FHWA will consider the status of these observations as part of the scope of Audit #3. The team will also include a summary discussion that describes progress since the last audit in the Audit #3 report.

1. Program Management

Successful Practices

The team recognized four successful program management practices. First, it was evident through interviews that TxDOT has employed many highly qualified staff for its program. Second, the team saw evidence of strong communication between TxDOT's ENV and District staff with regard to explaining roles and responsibilities associated with implementation of the MOU for NEPA Assignment. Third, based on the response to the pre-Audit #2 information request and interview questions, the team recognized TxDOT ENV's efforts to develop and update procedures, guidance, and tools as necessary or required to assist Districts in meeting requirements of the MOU. Finally, District staff understands and takes pride in and ownership of their CE determinations. The ENV likewise takes pride in their responsibility for EA and EIS decisionmaking and oversight for the NEPA Assignment Program.

In addition, the team found evidence of six successful program management practices through information provided by TxDOT and through interviews. The team recognizes the TxDOT project Core Team concept, which provides joint ENV and District peer reviews for EAs and EISs as a good example of TxDOT utilizing its existing staff to analyze NEPA documents and correct compliance issues on higher level of NEPA documentation and procedures before project approval. Many Districts appreciate the efforts of and results from the project Core Team and credit them for assuring their projects are compliant.

The "NEPA Chat" continues to be a notable example of TxDOT's effort to achieve a compliant NEPA Assignment Program with enhanced communication among TxDOT environmental staff statewide. The NEPA Chat, led by ENV, provides a platform for complex issues to be discussed openly, and for Districts to learn about statewide NEPA Assignment Program issues, and new policies and procedures. To date, the NEPA Chat has proven to be an effective vehicle to disseminate relevant NEPA information quickly and selectively to the TxDOT District Environmental Coordinators.

Also, based on interviews and the response to the pre-audit information request, almost all of the ENV and District staff feel there is sufficient staff to deliver a successful NEPA Assignment Program at the ENV and District level. This is further supported by ENV's willingness to shift responsibilities to better align with the needs of the NEPA Assignment Program. After interviewing the various Districts, they indicated that ENV is available to assist the Districts whenever they need help.

The ENV Self-Assessment Branch (SAB) fosters regular and productive communication with District staff after environmental decisions are made. The SAB staff prepares and transmits a summary of the results of their reviews of project documentation, both positive and negative, and follows up with the District Environmental Coordinator responsible for the project via telephone. They provided this feedback within 2 weeks of their review, which resulted in early awareness of issues and corrective action, where necessary, and positive feedback.

The refinement of the pilot "Risk Assessment" tool (a "smart pdf form") for environmental documents is a successful, but optional, procedure that may become part of ECOS during the scheduled upgrades. Based on the team's interviews, when District staff use the form, they are better able to understand the resources to be considered, what resources should receive further analysis, and the resulting output serves as documentation for District decisions. Even though this tool is not yet currently integrated within ECOS, it can be uploaded when used.

The TxDOT noted that it had recently developed a QA/QC Procedures for Environmental Documents Handbook (March 2015), and it is used by the project Core Team to develop EA and EIS documents. Through TxDOT's response to pre-Audit #2 questions and through interviews with various staff, TxDOT has continued to demonstrate that it has provided a good base of tools, guidance, and procedures with associated and timely updates to assist in meeting the terms of the MOU and still takes pride in exercising its assumed responsibilities.

The team considers three observations sufficiently important to note below. The FHWA urges TxDOT to consider ongoing and/or additional improvements or corrective actions to project management in its NEPA Assignment Program to address these observations.

AUDIT #2 Observations

Audit #2 Observation #1

Based on interviews with the USACE and USCG, FHWA would like to draw TxDOT's attention to several items. The team found that USCG had multiple ENV and District points of contact and preferred to deal with only one ENV point of contact at TxDOT. A single point of contact was the practice prior to the NEPA Assignment Program when issues needed to be elevated. The TxDOT has indicated that it identified a point of contact for USCG in August of this year, but will follow up in writing. The USACE noted that with the final rule the USACE opinion may change with regard to how it conducts its own regulatory process. This may prove to be problematic for applicants like TxDOT. Generally, it is important for TxDOT to maintain and strengthen relationships with Federal agencies including the State Historic Preservation Officer that processes Section 106 actions. This may be considered critical under NEPA Assignment as TxDOT is acting as a Federal agency.

Audit #2 Observation #2

The team found in a legacy project (*i.e.,* a project that began with FHWA as the lead agency and was transferred to be TxDOT-led after NEPA Program Assignment) that an ESA "no effect" determination was made by TxDOT to support a FONSI. Previously, when acting as the lead agency, FHWA had requested that TxDOT resolve issues identified in the USFWS correspondence for the project. In this instance, the project record initially reflects a "may affect" determination by FHWA that later changed to a "no effect" determination by TxDOT. The team was unable to find documentation in the project file to justify why such a change occurred. The team is currently working with TxDOT to review the process by which TxDOT makes "no effect" determinations for ESA. If concerns remain after this collaboration, FHWA may invite our USFWS liaison to review this issue in more depth as part of Audit #3.

Audit #2 Observation #3

One project file contained information about an 8-mile detour categorized as not a "major traffic disruption." An interviewee at a different District identified what they considered a different standard (*i.e.,* 2-mile detour) for a "major traffic disruption." These observations suggest TxDOT's approach to defining 23 CFR 771.117(e)(4) for major traffic disruption may be inconsistent. The FHWA recognizes that the context of when a disruption is considered to be "major" is important and may depend on local conditions. The FHWA urges TxDOT to develop guidance and a set of examples for rural, urban, and metropolitan Districts to align when major traffic disruption occurs.

2. Documentation and Records Management

The team relied on information in ECOS, TxDOT's official file of record, to evaluate project documentation and records management. The ECOS is a tool for information records, management, and disclosure within TxDOT District Offices, between Districts and ENV, and between TxDOT and the public. The strength of ECOS is its potential for adaptability and flexibility. The challenge for TxDOT is to maintain and update the ECOS operating protocols (for consistency of use and document/data location) and to educate its users on updates in a timely manner.

Successful Practices

A number of best practices demonstrated by TxDOT were evident as a result of the documentation and records management review. The ECOS has demonstrated system-wide improvements in usage by Districts since Audit #1, most notably in the areas of download speed and interface. The ECOS has improved in areas of connectivity and speed, and technical support for ECOS is rated as being very high and responsive. The team recognizes the need for continuous updates and maintenance for the ECOS system and ENV's upcoming plans for additional NEPA compliance and documentation related improvements in five phases. The team also recognized that TxDOT Districts are making good use of the Project Risk Assessment Forms to Develop Project Scope and help guide the environmental process.

Based on examination of the 130 sample files reviewed, the team identified five general observations that are mostly issues where record keeping and documentation could be improved or clarified. The team used a documentation checklist to verify the presence of information required by regulation and review the files of the 130 sampled projects.

Audit #2 Observation #4

One project shows a NEPA clearance date that occurs after the LOA clearance date. The TxDOT has indicated that this was a data entry error that was preserved "in order to understand the progression of project development." The NEPA clearance must occur before a date of LOA clearance according to TxDOT process.

During the interviews, the team learned that ECOS files may be deleted by their author and leave no trace of that deletion in ECOS. In addition, the team learned through interviews that deleted files may not be recovered. The FHWA is concerned about this lacking functionality and urges TxDOT to consider that if decisional information can be deleted, especially if the deletion occurs after the NEPA decision document is signed, the project record would not support the decisions made.

Audit #2 Observation #5

The team reviewed files for one project where the NEPA decision may be an example of a potential inconsistency in NEPA document content for a single project. The scope in the EA document described both a road widening with bridge replacement and widening without bridge replacement. The FONSI document project scope was described as roadway widening, the file documentation was unclear as to the status of the intent to replace the bridge. The team urges TxDOT to carefully compare the project description in an EA and any resulting FONSI and to explain in the FONSI any project description changes from the EA.

The team found there were 15 out of 83 project files where criteria for a specific CE category remained either undocumented or unclear for certain CEs (c)(26)–(28). Examples included a project that may not conform to 23 CFR 771.117(e)(4) due to major traffic disruption, a (c)(22) operational ROW project stated both "rehab lanes" and "widen lanes," and (c)(23) projects not to exceed $5 million in Federal funds.

Audit #2 Observation #6

The FHWA is generally interested in how TxDOT fulfills its environmental commitments, which TxDOT records through an Environmental Permits, Issues and Commitments (EPIC) sheet. Such sheets become part of both the project record and often, the project bid package. In reviewing project files, the ECOS commitment tab defaults to the following note "No EPICs exist for this project" while the same file contained uploaded EPIC sheets in the ECOS documentation tab. Since the EPIC sheet is the way TxDOT implements its environmental commitments, the team would like to draw TxDOT's attention to occasional contradictory information on EPICs in its project files. The team acknowledges that TxDOT has recognized this issue and created a joint

District and ENV team to address this problem.

Audit #2 Observation #7

The team found two examples of a single project that had multiple CE approvals. Each decision document had a different approval date, however the project was unchanged. The approval documents (with different dates) otherwise appeared to be identical, with the exception of minor editorial changes, such as adding a position title or utilizing an updated form. After interviews with SAB staff, the team learned that this practice was used to correct editorial mistakes or when new forms were released. The team could not determine the appropriate NEPA approval date. If a decision document (CE, FONSI, or ROD) needs to be revisited, FHWA regulations require a re-evaluation. A re-evaluation does not create a new NEPA approval date, it just analyzes if the original decision remains valid in light of the new information. The TxDOT might clarify its project files by including a journal entry in ECOS to explain the correction of errors on forms.

Audit #2 Observation #8

One type of decision reviewed by the team was a sequence of re-evaluations on the same project change that occurred after a NEPA approval has been made. The team found one project that had three partial re-evaluations in succession for the same design change (a sidewalk relocation) for adjacent parcels and a construction easement in each separate re-evaluation consultation checklist. The TxDOT indicated in its comment on this observation that the project was proceeding under a design-build contract that led to a number of changes. The FHWA is concerned that this TxDOT activity could possibly lead to segmenting the review of new impacts if this practice were to continue.

Audit #2 Observation #9

In general the team views the continuing delay in implementing needed substantive ECOS upgrades (*i.e.,* outdated CE terminology and EPIC documentation contradiction, since CE MOU approval on February 12, 2014) and the current schedule to implement upgrades over 5 years to be too long a timeframe as recurring errors may result. The team urges TxDOT to implement the upgrades with the timeframe of FHWA audits, as it has continued to make recurring observations on project recordkeeping during audits.

3. Quality Assurance/Quality Control

The team considers the QA/QC program to be generally in compliance with the provisions of TxDOT's QA/QC Plan. The team was pleased to see that many of the positive items mentioned and observed in Audit #1 appear to be continuing to occur.

Successful Practices

The team observed four areas of successful practices currently in place that align with TxDOT's QA/QC Control Procedures for Environmental Documents. First, during the team site visits to the TxDOT Districts it learned that one District (Houston) has one person dedicated to reviewing the NEPA documents in order to review documentation for quality and completeness (QC as it occurs before the decision is made), and heard in an interview from another District (Dallas) they are planning to do the same.

Second, the team learned that the Core Team concept (QC) appears to be working and is well received by the District offices visited during the audit. The opportunity of District Environmental Coordinators to work with an ENV person early in the process to identify potential issues should result in efficient document preparation, an expectation of a quality document, complete project file, and improved project delivery.

Third, the team received a lot of positive comments from the Districts visited regarding the SAB of TxDOT. The District staffs stated that the SAB feedback (QA that occurs after the decision is made) was quick and resulted in a great training tool to improve documentation on future projects. The team urges TxDOT to continue this practice and encourages TxDOT to consider more focused and timely input at the pre-decision stage of project development process during QC. It is possible that the non-compliance observations cited in this report could have been identified and corrected if an enhanced pre-decisional (QC) process related check were implemented.

Fourth, since the beginning of 2015, TxDOT has created over 31 tool kits, guidance, forms, handbooks, and procedures to improve consistency and compliance of its NEPA documents and decisions. Feedback during interviews indicated that the TxDOT staff appreciated the effort from ENV to create user friendly forms and procedures to ensure compliance and reduce errors in their documentation.

As a result of the team's file reviews and interviews, it considers three observations as sufficiently important to urge TxDOT to consider improvements or corrective actions in its approach to QA/QC.

Audit #2 Observation #10

During the audit file reviews, the team occasionally found difficulty locating information in project files and could not determine whether environmental requirements were addressed but not documented. Based on what the team found in ECOS records, TxDOT appears to lack a statewide standard or guidance on ECOS naming conventions or ECOS file management. The FHWA reviewers found file names that were not intuitive for conducting efficient or comprehensive reviews. During interviews with the Districts visited, TxDOT staff at times also had trouble locating information in ECOS and was uncertain of the details of projects when questioned. This lack of consistency statewide is an issue that TxDOT acknowledged in a closeout meeting with the team and stated that it was working toward resolving the issue internally. The team will continue to monitor this issue in Audit #3.

Audit #2 Observation #11

Based on the recurring non-compliance observations from Audits #1 and #2, the team urges TxDOT to focus effort on its QA/QC actions. In a few instances, the team found documentation in the project files that was the result of QC, especially when a form was in error and had to be redone. But generally, the team found no entries in project files that showed projects had been reviewed for QC. The team could not determine for the project files reviewed for this audit whether TxDOT's actions effectively implemented QA/QC actions that were agreed to in MOU Part 8.2.4. The FHWA will focus efforts in Audit #3 on how TxDOT applies QC and implementing QA strategies to individual projects.

4. Legal Sufficiency Review

From interviews the team learned there are two attorneys in TxDOT's Office of General Counsel (OGC) who provide legal services on environmental issues. The OGC has an ongoing process to fill the third environmental attorney position in OGC. In addition, OGC has had an outside contract attorney providing legal assistance on environmental issues for a number of years. The OGC recently completed its biannual procurement of outside legal services for environmental issues, and has now obtained legal services from a total of three law firms. Legal counsel (both OGC staff and outside counsel) are primarily dedicated to serve as a resource providing legal assistance in project development, review of environment documents, and legal sufficiency reviews.

Assistance from OGC (who assisted in developing the sections) is guided by ENVs Project Delivery Manual Sections 303.080 through 303.086. These sections provide guidance on requesting legal sufficiency, legal sufficiency review of FHWA projects, and review of publishing a Notice of Intent (NOI) to prepare an EIS and Notice of Availability in the **Federal Register**. Per the guidance, legal sufficiency is required prior to approval of:

(1) NOI to prepare an EIS
(2) Final Environmental Impact Statement (FEIS)
(3) Individual 4(f) Statement (programmatic or de minimis 4(f) evaluations do not require legal sufficiency review)
(4) Notice that a permit, license, or approval is final under 34 U.S.C. 139(1).

The OGC is available as a resource to ENV and the Districts to answer questions on NEPA issues and specific questions on projects. Requests for assistance are made through ENV and the vehicle for communication is primarily email. The guidance states that communications between OGC and ENV for the purpose of rendering legal services or advice are protected by the attorney-client privilege.

Based on a report provided by OGC, since January 1, 2015, it has reviewed or has been involved in providing legal review for 15 project actions. These included five 139(l) notices, an FEIS/ROD, three RODs, one NOI, an EA, a public hearing and response report, an FEIS, and an FEIS errata sheet. The OGC provided legal sufficiency reviews for all 139(l) reviews, the FEIS errata sheet, and the FEIS.

Currently, ENV project managers request the review of documents and/or materials by OGC. The lead attorney in OGC assigns the project to staff based on workload and issues. He works with the project managers to agree upon an acceptable review timeframe. Per OGC, reviews are only done after the technical reports have been reviewed and approved by ENV. Comments from the attorney are provided in the usual comment/response matrix to ENV, which incorporates them into the overall comment/response matrix that is sent to the project Core Team to address. Once any comments are adequately addressed, the attorney will issue a legal sufficiency statement. The OGC does not maintain a separate project file as it completes review of a project.

In reviewing the document for legal sufficiency the OGC attorneys rely on Federal regulations and guidance, TxDOT toolkits and manuals, and discussions with project delivery managers. The OGC relies on the subject matter experts to ensure the technical reports are adequate, and only does an in-depth review of a technical report if warranted. In general, the attorneys are looking for consistent, well written documents that are reader friendly and clearly document the NEPA decision. After reviewing the document, there is a consultation between the lead attorney and staff attorney concerning the review results before a legal sufficiency finding is issued. Copies of emails providing comments on Federal and State register notices, the legal sufficiency reviews of several Section 139(l) notices, and an FEIS were provided to the team.

The lead attorney for OGC has 11 years of transportation experience with TxDOT but until NEPA assignment process began, only limited NEPA experience. The other OGC attorney's NEPA experience also began with the NEPA Assignment process. The contract attorney has had approximately 12 years of experience working NEPA issues and lawsuits in Texas. The OGC may hire outside law firms to provide assistance on an as-needed basis. All such firms have extensive transportation and NEPA experience.

The OGC indicated that there has been some early involvement in project familiarization and information gathering so that it is aware of potential issues, impacts, and timeframes during project initiation and scoping. The OGC is making a concerted effort also to attend public hearings and other project meetings as the project development process progresses. The OGC wants to be considered a resource for the ENV and TxDOT Districts from early on in project development as opposed to only being contacted when there are major issues.

Based on the team interviews and review of documentation, the requirements for legal sufficiency under the MOU are being adequately fulfilled. In FHWA's experience, legal staff can expand their role by inserting themselves into the project development process and promoting their availability as a resource to TxDOT staff.

Audit #2 Observation #12

Neither in the project delivery manual nor elsewhere does OGC provide an expectation for the time frame necessary for a legal review. The team urges TxDOT to establish a review time frame for legal sufficiency, develop some education and outreach materials to the TxDOT Districts regarding the OGC role, especially as a resource, and suggested additions to the legal sufficiency documentation.

5. Performance Measurement

Part 10 of the MOU identifies performance measures to be reported by TxDOT that FHWA would consider in conducting audits. The FHWA did not independently verify the measures reported by TxDOT. The TxDOT's first Self-Assessment Summary Report (since implementing NEPA Assignment) discusses progress made toward meeting the four performance measures. These measures provide an overall indication of TxDOT's discharge of its MOU responsibilities. In addition, in collecting data related to the reporting on the performance measures, TxDOT monitors its overall progress in meeting the targets of those measures and includes this data in self-assessments provided under the MOU (Part 8.2.5). The four performance measures are: (1) compliance with NEPA and other Federal environmental statutes and regulations, (2) QA/QC for NEPA decisions, (3) relationships with agencies and the general public, and (4) increased efficiency and timeliness in completion of the NEPA process.

The TxDOT reports three measures of compliance with NEPA and other Federal laws and regulations: (1) percent of complete NEPA Assignment Program Compliance Review Reports submitted to FHWA on schedule, (2) percent of identified corrective actions that are implemented, and (3) percent of final environmental documents that contain evidence of compliance with requirements of Section 7, Section 106, and Section 4(f). The measured results range between 97 percent and 100 percent complete.

The TxDOT considered QA/QC for NEPA decisions with three measures: (1) percent of FEISs and individual Section 4(f) determinations with legal sufficiency determinations that pre-date environment document approval, (2) percent of EAs and EISs with completed environmental review checklists in the file, and (3) percent of sampled environmental project files determined to be complete and adequate for each self-assessment period. These measured results range between 94.3 and 100 percent.

The TxDOT is still in the process of assessing its measure of relationships with agencies and the general public. Since the completion of Audit #1, TxDOT has prepared and distributed a survey to agencies it interacts with as part of NEPA. The survey asked agency staff to respond to TxDOT's capabilities, responsiveness, efficiency, communications, and quality. The TxDOT proposes to poll agencies each year and report comparisons in future self-assessments. The TxDOT's measure of its relationship with the public is to compare the number of complaints received year to year. The TxDOT reports no complaints from the public received since assuming NEPA Assignment. A second measure for public relationship is the percent of signed final EA or EIS projects where a public meeting or hearing was conducted and the associated documentation was in the file. The TX DOT reports a measure of 92.3 percent because one EA file had a missing signed public hearing certification page. A third measure of relationships considered by TxDOT is the time between beginning a formal conflict resolution process and the date of resolution. The TxDOT reports there was no conflict resolution process initiated during the team's review period.

The TxDOT provided its initial measures of increased efficiency and timeliness in completion of the NEPA process in the Self-Assessment Summary Report. Its first of three measures is to compare the median time to complete CEs, EAs, and EISs before and after assignment. The TxDOT reports that it needs more time to compile post-NEPA assignment data. The TxDOT reports that the pre-NEPA assignment median time frame to complete an EA is 1060 days (35.33 months) and 3,351 days (111.7 months) to complete an EIS. The second measure is the median time frame from submittal of biological assessment to receipt of biological opinion. The TxDOT reports that the pre-NEPA Assignment median time frame for completing a biological opinion is 43 days, and 16 days to complete informal consultation. The TxDOT reported a time frame of 65 days for a single biological opinion since NEPA Assignment. The 10 informal consultations since assignment had a median time frame of 28 days (12 days longer).

Successful Practices

In interviews, the team learned of several best practices from the TxDOT CE Self-Assessment Report. The TxDOT's QA/QC process generates measures of error rates that provide useful information to improve the overall program management and efficiency. The TxDOT has used performance measures to evaluate the effectiveness of the SAB Feedback Program, and has demonstrated reduced error rates over its limited review time frames. Also, some of the measures closely correlated with follow up training which demonstrated its utility. One individual stated in an interview that the initial rate was initially in the high single digit percentiles (c.f., if CE determinations were signed or not). The team then considered three periods of data corresponding to rough quarter yearly time frames. In the initial quarter, people who made mistakes and were then mentored through a phone call showed a drop in number of errors over time. The same people were, for the most part, no longer making the same errors after the third quarter.

Another practice the team learned about through interviews was that TxDOT had collected and considered many measures of its performance in addition to the ones in the Self-Assessment Report Summary. The team requested more information about these additional measures from TxDOT and has received some details (TxDOT's CE Self-Assessment Report). The team hopes to see more. The team encourages TxDOT to generate performance measures in addition to the ones reported and to share those measures with the team as part of FHWA's overall review of NEPA assignment.

Audit #2 Observation #13

The team continues to be concerned that the measure for the TxDOT relationship with the public may be too limited by focusing on the number of complaints, and urges TxDOT to continue thoughtful consideration of the development of this measure. The team learned through interviews that the CSTAR database is where complaints get recorded and distributed to different parts of TxDOT, but that it apparently was not consulted to compute a baseline measure to use for comparison. Also, public complaints, according to District staff, come into individual District offices which may not be tabulated in CSTAR. The team urges TxDOT to consider the measure of public relationship in more refined detail than agency-wide scale to distinguish concerns that are tied to a particular project and those tied to program management and decisionmaking. The FHWA acknowledges that public comments and complaints were and will continue to be an important consideration in project level decisionmaking. The performance measure for public relationship should address TxDOT's consideration of project specific concerns (not just the number of complaints) and concerns about the environmental program.

6. Training Program

The team recognizes the following successful practices. The team learned of resource sharing within the Houston District of Subject Matter Resource (SMR) staff who serve as in-house sources of knowledge and expertise. The SMR staff also commit to attend formal training and perform self-study in their resource areas, which allows them to provide training and mentor other staff on subjects within or related to the resource area.

A second best practice described to the team was that TxDOT conducted a survey of its staff in the summer of 2015 to determine needs and issues related to training. The TxDOT provided the survey results, and the team found these data to be both detailed and informative. The TxDOT reported during the pre-Audit #2 that this information was used to identify training needed by ENV staff to professionally develop Division staff and maintain expertise in their respective subject areas. The survey results from District staff identified training needed for District environmental staff to perform job duties. The team looks forward to reviewing TxDOT's progressive training plan and the updated training plan based on the new data.

A third best practice the team learned through interviews is that the TxDOT tool kit (available to consultants, local government staff, and the public) provides training opportunities for documentation and record keeping. When a consultant raises a question or concern in response to a TxDOT document review comment, staff can refer to the tool kit in order to support the TxDOT position. Finally, the ENV Director said in his interview that the tool kits contribute to increased consistency throughout the process (*e.g.*, comments on documents, format, and content), resulting in a more predictable project development process. That consistency is appreciated across the board in Districts and LPAs.

Audit #2 Observation #14

The FHWA recognizes that TxDOT's annual environmental conference is its primary outreach to Local Public Agencies (LPA) and consultants to address a wide array of environmental topics that reinforce existing and new environmental policies and procedures. However, the 2015 conference was not well attended by LPA staff, a fact acknowledged by the Director of ENV in his interview. He also indicated that he was thinking of reaching out to large metropolitan planning organizations and the Association of Texas

Metropolitan Planning Organizations in a meaningful way in coordination with TxDOT's training coordinator. The team also learned through interviews that some, especially rural District local government staff, were uninformed of the changes with TxDOT NEPA Assignment. The team encourages the Director of ENV and the training coordinator to implement ways to train local government staff.

Status of Observations since the Last Audit (December 2015)

Non-Compliant Observations

Audit #1 identified two non-compliance observations. One was related to the application of a CE action that related to a program that TxDOT did not have. The TxDOT acknowledges this non-compliance observation and has taken corrective action to prevent future non-compliance. Accordingly, a stand-alone noise wall project using 23 CFR 771.117(c)(6) is no longer a possible selection of CE actions that any TxDOT District can make. The other was an instance where a CE determination was made (called a conditional NEPA approval or "conditional clearance") before all environmental requirements had been satisfied. Since Audit #1, TxDOT has continued to make NEPA approvals "conditionally," and those actions have been identified as non-compliant in this report. The TxDOT drafted an update of an SOP to address this issue. The FHWA expects TxDOT to prepare a corrective action so that its program would comply with the MOU. The FHWA will review the corrective action and indicate to TxDOT whether it satisfactorily addresses this concern. Also, FHWA requested that TxDOT take additional steps to prevent any future non-compliance in this regard.

Observations

1. *Updates to ECOS, the TxDOT File of Record*

The TxDOT ran into further delays in implementing its ECOS upgrade contract. The TxDOT has a plan in place that outlines five phases of work to be performed to upgrade ECOS over many years. Substantive ECOS upgrades are still pending as of the development of this draft report. This is leading to continued observations by FHWA, and inconsistencies within ECOS by TxDOT users. A lack of mandatory filing and naming conventions by ENV contributes to this issue. Of concern to FHWA is the ability for TxDOT users to potentially delete files and approvals in ECOS without an archive of such actions. This could be problematic as it differs from the FHWA's previous understanding of ECOS security measures in place from Audit #1.

2. *Addressing Conflicts and Disputes*

Since Audit #1, TxDOT has implemented conflict resolution training for its ENV and District staff. This training has been well received and should help prepare staff to recognize when conflicts may occur and to take steps to address issues before they develop into disputes. Interviews conducted for Audit #2 suggest that TxDOT and resource agency staff may need to focus on improving communication in order to foster and nurture relationships.

3. *Local Public Agency Project Reviews*

This observation continues as is. The LPA were invited to the TxDOT Environmental Coordinators Conference (ECC), but TxDOT ENV confirmed that few LPAs attended. It was further noted by TxDOT that perhaps the ECC may not be the best training venue for LPAs that need more than introductory information or refreshers on NEPA related topics. Furthermore, some rural Districts indicated that they remain Department Delegate on local projects when LPAs can or should be project sponsors, because LPAs in the rural areas are sometimes unaware of what to do to develop their projects. The situation seems to be different in metropolitan areas where LPAs are more sophisticated and can perform well as project sponsors.

4. *Recording and Implementing Environmental Commitments*

The team continued to find issues with the EPIC sheet and commitments in Audit #2. A total of 21 instances were found where inconsistencies in EPIC reporting were noted. Primarily, there was the fundamental problem of EPICs being required (and sometimes uploaded under the documentation tab) for a project but a notice stating "No EPICs Exist for this project" under the EPIC tab in ECOS was frequently found. The TxDOT has formed an internal team to address this issue.

5. *Inadequate Project Description*

The TxDOT has begun to address the issue of inadequate project descriptions by providing training on expectations for what should be in a project description in its 2015 environmental conference. The training instructors included individuals from FHWA and TxDOT. The team continued to find project descriptions that were unclear or may not have supported the decisions made in project files. The team suggests that TxDOT apply QA/QC to this issue. The TxDOT acknowledges this is a continuing issue and has indicated that it will continue to address it in NEPA chats and training.

6. *Project File Organization and Completeness Issues*

The team continued to find outdated terms in project files (*e.g.*, BCE/PCE) and have occasional difficulty in finding information in project files with no consistent file labeling protocol or expectations for where to find specific information. For example, resource agency coordination letters were sometimes found as individual documents in a file and other times they were appended to a NEPA document. The TxDOT indicated that it formed a workgroup in the summer of 2015 that meets to address inconsistencies regarding filing and naming conventions.

7. *Public Disclosure of ECOS Project Records*

The TxDOT has not taken any actions on this item other than to make information available upon request or at public meetings/hearings for a project.

8. *No EAs or EIS Being Reviewed by the SAB Team*

The team learned that SAB only performs post decision (QA) reviews and provides feedback to both the Districts directly and the Corrective Action Team at ENV to consider if any process or procedural changes are needed. The FHWA believes there is a function that SAB or others could serve before the decision is made that would add value to the upfront QC process for both document content and procedural compliance. The FHWA understands the expected benefits of Core Team reviews but believes something more is needed and it would be helpful to Districts.

9. *Sampling Approach for QA/QC*

The team learned in Audit #2 that there is a risk-based sampling method applied to choosing projects types that are selected for more detailed reviews, and that the number of staff available for the reviews dictates the number of reviews that are completed. The review sample is based on a computer generated model that chooses some of the projects randomly. There is no established sampling methodology for self-assessing the effectiveness of TxDOT's standards or guidance. The FHWA would like to see more clarification from TxDOT on the effectiveness of its current practice and be provided data to verify TxDOT claims of compliance.

10. *Confusion in Understanding Quality Control, Quality Assurance, and Self-Assessment*

Most of the confusion within TxDOT regarding these terms has been cleared up. The FHWA believes that additional internal (QC) review (beyond the Core Team concept for project documentation) for NEPA process-related checks by TxDOT before the decisions were made would add value to the process, help ensure NEPA compliance, and assist with FHWA's requirement to make informed and fully compliant project authorization decisions.

11. *Narrow Definition of the QA/QC Performance Measure*

The team's Observation #11 was that the QA/QC measure for NEPA decisions focused only on EA and EIS projects. The team urges TxDOT to consider evaluating a broader range of NEPA related decisions (including, but not limited to CEs, re-evaluations, Section 4(f), and STIP/Transportation Improvement Program (TIP) consistency). Note that the recurring non-compliance observations occurred on CEs with either STIP/TIP or Section 4(f) items that were not ready for a decision to be made. In recent interviews with TxDOT staff, the team learned that TxDOT will examine other measures on an ongoing basis for internal use. The team believes that if the QA/QC refocuses attention not only on the documentation, but also on the required sequential NEPA process related items, that improved efficiencies related to TxDOT's NEPA decision and FHWA project authorization could result. The team believes that a more relevant focus on process could potentially help avoid non-compliance actions by TxDOT under the MOU and FHWA non-compliance observations in future audits.

12. *Performance Measure Utility*

Observation #12 was that the utility of several of the performance measures was difficult to determine. Also, the team was concerned that the measure for the TxDOT relationship with the public may be too limited by focusing on the number of complaints. Through recent interviews, the team learned that TxDOT staff agree with FHWA's concerns about utility. Quantifying changes in relationships with the public or agencies is possible, but the number is hard to interpret. Regarding the survey of agencies, TxDOT staff indicated that they did not know if agencies have higher expectations of TxDOT compared with other agencies. Considering the TxDOT relationship with the public, staff told the team that, during the preparation of their application, they considered various sorts of surveys and social media outreach. Given the cost of these approaches, TxDOT was not convinced of their utility and so decided not to use any of them. This leaves the performance measure difficult to address for TxDOT and may be a recurring FHWA observation until it is resolved.

13. *TxDOT Reliance on the California Department of Transportation (Caltrans) Training Plan*

The team's Observation #13 was that the Caltrans training plan, which served as a basis for the TxDOT training plan, may not adequately meet the needs of TxDOT. The team urged TxDOT to consider other State DOT approaches to training. The TxDOT staff said in a recent interview that they had reviewed training plans from Virginia, Ohio, Alaska, and Florida. They also indicated that prior to Audit #2, TxDOT had completed a survey of staff in District offices and at ENV to assess training needs. The team was told that the surveys would be used to update the training plan in the spring of 2016.

14. *Adequacy of Training for non-TxDOT Staff*

Observation #14 urged TxDOT to assess whether the proposed training approach for non-TxDOT staff (relying heavily upon the annual ECC) is adequate and responsive enough to address a need to quickly disseminate newly developed procedures and policy. Through interviews, the team learned that TxDOT does not prioritize training classes specifically for non-TxDOT staff. The Director of ENV acknowledged that the training session at the recent ENV conference for LPA staff was not well attended and was thinking of reaching out to large planning organizations. The TxDOT concluded that its priority for training is first for TxDOT staff internally (ENV and District staff), second for consultants that TxDOT hires for environmental work, and third for LPAs. In years three and beyond of the TxDOT NEPA Assignment, the training plan may start to focus on the second, and eventually third, priority groups of individuals.

15. *What Training is Mandatory*

Observation #15 resulted in a team suggestion that the progressive training plan clearly identify the training required for each job classification. The TxDOT training coordinator told the team that the progressive training plan will address training required to meet State law (16 hours of training) and job task certification. This plan will be developed at the end of 2015.

16. *Training Plan, Consideration of Resource Agency Recommendations*

The team learned in a recent interview that in the fall of 2015 (as in the fall of 2014), TxDOT subject matter experts planned to reach out to resource agencies to ask what training they would like to see conducted for TxDOT staff. Previously, USACE staff said that TxDOT needed Section 404 training. The TxDOT scheduled and completed Section 404 training in two different locations during October 2015. The TxDOT will continue to schedule Section 404 training.

Finalization of Report

The FHWA received one response from the TxDOT during the 30-day comment period for the draft report. The team has considered the TxDOT comments in finalizing this audit report. The TxDOT's comments reflect actions it has taken in response to the report's observations. The FHWA will address these follow up actions in the third audit report, now in preparation. Only one comment has resulted in a non-substantial change in this report. Observation #1 mentioned a possible communication issue with the THC. The FHWA agrees that the comment may not reflect the official position of the agency and has deleted the sentence mentioning the THC.

The TxDOT made several comments disputing non-compliance observation #1. Representatives from FHWA and TxDOT met to discuss non-compliance observation #1 on May 11, 2016. The TxDOT, via an email, has subsequently decided to withdraw their comments on this non-compliance observation. The final report discussion of non-compliance observation #1 has not been revised.

The FHWA has finalized the draft Audit #2 report previously published in the **Federal Register** without substantive changes.

[FR Doc. 2016–19476 Filed 8–15–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2016–0028]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and its implementing regulations, the Federal Transit Administration (FTA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting this information collection requirements for

clearance by the Office of Management and Budget (OMB), FTA is soliciting public comment on specific aspects of the activities identified below.

Title: 49 U.S.C. Section 5307—Urbanized Area Formula Program.

OMB Number: 2132–0502.

Background: 49 U.S.C. 5307 The Urbanized Area Formula Funding program (49 U.S.C. 5307) makes Federal resources available to urbanized areas and to Governors for transit capital and operating assistance and for transportation related planning in urbanized areas. An urbanized area is a Census-designated area with a population of 50,000 or more as determined by the U.S. Department of Commerce, Bureau of the Census. Funding is made available to designated recipients, which must be public bodies with the legal authority to receive and dispense Federal funds. Governors, responsible local officials and publicly owned operators of transit services are required to designate a recipient to apply for, receive, and dispense funds for urbanized areas pursuant to 49 U.S.C. 5307(a)(2). The Governor or Governor's designee is the designated recipient for urbanized areas between 50,000 and 200,000. Eligible activities include planning, engineering, design and evaluation of transit projects and other technical transportation-related studies; capital investments in bus and bus-related activities such as replacement of buses, overhaul of buses, rebuilding of buses, crime prevention and security equipment and construction of maintenance and passenger facilities; and capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software. All preventive maintenance and some Americans with Disabilities Act complementary paratransit service costs are considered capital costs. For urbanized areas with populations less than 200,000, operating assistance is an eligible expense. For urbanized areas with 200,000 in population and over, funds are apportioned and flow directly to a designated recipient selected locally to apply for and receive Federal funds. For urbanized areas under 200,000 in population, the funds are apportioned to the Governor of each state for distribution. With the passing of Fixing America's Surface Transportation Act, the 100 Bus Rule was been expanded to include demand response service, excluding ADA complementary paratransit service. An exception to the 100 Bus Rule has been added as well. If a public transportation system executes a written agreement with one or more other public transportation systems within the urbanized area to allocate funds by a method other than by measuring vehicle revenue hours, each public transportation system that is part of the written agreement may follow the terms of the written agreement instead of the measured vehicle revenue hours. Under Grant Recipient Requirements, a provision has been added that directs recipients to maintain equipment and facilities in accordance with their transit asset management plan. Recipients are no longer required to expend 1% of their funding for associated transit improvements. However, recipients are still required to submit an annual report listing projects that were carried out in the preceding fiscal year. The Passenger Ferry Grant Program is also available to urbanized areas under the authority provided through 49 U.S.C. 5307 (section 5307). This program provides discretionary opportunity to capital projects. Capital projects include, but are not limited to, the purchase, replacement, or rehabilitation of ferries and terminals and related equipment. Funds may not be used to fund operating expenses, planning, or preventive maintenance.

Respondents: State and local government, business or other for-profit institutions and non-profit institutions.

Estimated Annual Burden on Respondents: Approximately 50 hours for each of the 2,245 respondents.

Estimated Total Annual Burden: 67,250 hours.

Frequency: Annual.

DATES: Comments must be submitted before October 17, 2016.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT:

Section 5307—Tara Clark, Office of Program Management (202) 366–2623, or email: *Tara.Clark@dot.gov.*

Passenger Ferry Program—Vanessa Williams, Office of Program Management (202) 366–4818 or email: *Vanessa.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

William Hyre,

Deputy Associate Administrator for Administration.

[FR Doc. 2016–19462 Filed 8–15–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2016–0029]

Notice of Request for Revisions of an Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the revisions of the following information collection: Transit Investments in Greenhouse Gas and Energy Reduction Program.

DATES: Comments must be submitted before October 17, 2016.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.
2. *Fax:* 202–366–7951.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Baltes, Office of Research, Demonstration and Innovation, (202) 366–2182, or email at *Michale.Baltes@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Transit Investments in Greenhouse Gas and Energy Reduction Program (OMB Number: 2132–0566).

Background: The American Recovery and Reinvestment Act of 2009 (ARRA) established the Transit Investments in Greenhouse Gas and Energy Reduction (TIGGER) Program with $100 million in new discretionary grant program funding to support public transit agencies in making capital investments that would assist in the reduction of energy consumption or greenhouse gas emissions within their public transportation systems. In two subsequent years, The Transportation, Housing and Urban Development, Related Agencies Appropriations Act, The Department of Defense and Full-Year Continuing Appropriations Act appropriated an additional $75 million and $49.9 million, respectively, for FY 2010 and FY 2011. The TIGGER Program has awarded 87 competitively selected projects, implementing a wide variety of technologies to meet program goals. The awarded projects were geographically diverse, covering 35 states and 67 different transit agencies in both urban and rural settings.

The information that's currently being collected for this program is submitted as part of the Project Management reporting requirements for TIGGER. The collection of Project Management information provides documentation that the recipients of TIGGER funds are meeting program objectives and are complying with FTA Circular 5010.1D, "Grant Management Requirements" and other federal requirements. FTA has published a **Federal Register** notice for the Announcement of Project Selections for each NOFA in consecutive FY 2009, 2010, and 2011, identifying program recipients.

Respondents: State and local government agencies.

Estimated Annual Burden on Respondents: 196 hours for each of the respondents.

Estimated Total Annual Burden: 17,052 hours.

Frequency: Annual.

William Hyre,

Deputy Associate Administrator for Administration.

[FR Doc. 2016–19463 Filed 8–15–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0042; Notice No. 2016–06]

Hazardous Materials: Termination of Designated Approval Agencies Approvals

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: This notice is to advise interested persons that PHMSA has terminated the Designated Approval Agencies approvals listed herein. PHMSA, via certified mail, attempted to contact all of the below listed approval holders during May 2015. PHMSA issued a Show Cause letter via certified mail requesting a response within 30 days with their intent with respect to the approval. None of the companies complied with the requirements of the letter. Thus, PHMSA issued a Termination letter via certified mail in December 2015. To date, PHMSA has not received any correspondence concerning the below listed approval numbers.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous

Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590 or at *approvals@dot.gov*.

Correspondence with respect to the below listed approval numbers should be sent to *approvals@dot.gov* with a subject line ''Termination Letter'' and should be in writing; state in detail any alleged errors of fact and law; enclose any additional information needed to support the request; and state in detail the modification of the final decision sought.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this notice, PHMSA's Approvals and Permits Division is terminating the approvals listed below based on a change in circumstances rendering the approval no longer necessary (49 CFR 107.713(b)(1)); and/or violations of your approval and the HMR that demonstrate a lack of fitness (49 CFR 107.713(b)(4)).

II. Background

On March 17, 2014, PHMSA held a mandatory Designated Approvals Agency (DAA) meeting. In May 2015, PHMSA mailed a Show Cause letter to each DAA that did not attend this meeting, requesting the DAA provide current operating status. The companies below did not respond to the Show Cause letter. In December 2015, PHMSA issued a Termination letter to each DAA listed below. As of January 1, 2016, PHMSA has not received any correspondence from these DAAs, and PHMSA terminated the approvals of the approval holders listed below. This **Federal Register** notice serves as an official announcement of termination of those approvals.

III. Action

PHMSA has terminated the below listed approvals, and this **Federal Register** notice serves as an official announcement to the public.

IV. Approvals Terminated

ID No.	Approval holder/company
107–94–01	Pacific Marine Repair, Inc.
IM–9703	TDI, Inc.
IA–0301	ATech Engineering.
IM–9603	Unicon International.
IA–8105	British Engine.
IM–9602	Commercial Union Insurance Company.
IA–0401	Trimac Transportation Services, Inc.

Issued in Washington, DC, on August 10, 2016, under authority delegated in 49 CFR part 107.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–19415 Filed 8–15–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0040; Notice No. 2016–04]

Hazardous Materials: Termination of Competent Authority Manufacturing Approvals

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: This notice is to advise interested persons that PHMSA has terminated the manufacturing approvals listed herein. In November 2014, PHMSA attempted to contact all of the below listed manufacturing approval holders via written correspondence. In July 2015, PHMSA issued a Show Cause letter via certified mail requesting a response within 30 days with their intent with respect to the approval. None of the companies complied with the requirements of the letter. Thus, PHMSA issued a Termination letter via certified mail in January 2016. To date, PHMSA has not received any correspondence concerning the below listed approval numbers.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590 or at *approvals@dot.gov*.

Correspondence with respect to the below listed approval numbers should be sent to *approvals@dot.gov* with a subject line ''Termination Letter'' and should be in writing; state in detail any alleged errors of fact and law; enclose any additional information needed to support the request; and state in detail the modification of the final decision sought.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this notice, PHMSA's Approvals and Permits Division is terminating the approvals listed below based on a change in circumstances rendering the approval no longer necessary (49 CFR 107.713(b)(1)); and/or violations of your approval and the HMR that demonstrate a lack of fitness (49 CFR 107.713(b)(4)).

II. Background

In November 2014, the Office of Hazardous Materials Safety Field Operations (OHMSFO) mailed a letter requesting approval status of the companies listed below. The companies listed below did not respond to the November 2014 request for information. In July 2015, PHMSA mailed a Show Cause letter to each of the companies listed below, requesting current approval status. The companies below did not respond to the Show Cause letter. In January 2016, PHMSA issued a Termination letter to each company listed below. To date, PHMSA has not received any correspondence from these companies. This **Federal Register** notice serves as an official announcement of termination of those approvals.

III. Action

PHMSA has terminated the below listed approvals, and this **Federal Register** notice serves as an official announcement to the public.

IV. Approvals Terminated

ID No.	Approval holder/company
300b–87–03	Industrias Vengas, S. A.
300b–96–02	Tanques Para Gas, S.A.
300b–87–01	Kanto Koatsu Yoki Mfg. Co.
807–06–01	Hulett Cylinders
807–04–06	Finetec Corporation
807–04–04	Changzhou Aircraft Manufacture Co. Ltd.
300b–96–03	Tanques Industriales Lajat, SA DE CV.
300b–92–02	Chengdu High Pressure Vessel Factory.
807–07–01	DACC Co., Ltd.
807–08–04	Guangming Overseas Chinese Farms.
300b–84–03	Primus Sievert AB.
300b–78–03	MCS Cylinder Systems GmbH.
807–08–01	Yongkang Yingpeng Chemical Machinery Co., Ltd.
300b–88–01	Implementos Agricolas LA, S.A.
300b–98–03	ROTH S.A.
300b–94–05	ISI GmbH.
300b–83–02	Cilbras.
300b–89–03	Wolfedale Engineering Limited.
300b–93–02	DDI Seamless Cylinder International Inc.
300b–88–02	Bruin Engineered Parts, Inc.
807–04–01	Yuxin Machinery Co., Ltd.

Issued in Washington, DC, on August 10, 2016, under authority delegated in 49 CFR part 107.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–19414 Filed 8–15–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 1075

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies.

DATES: Written comments should be received on or before October 17, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the publication should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 317–5746, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tax Information Security Guidelines for Federal, State, and Local Agencies.

OMB Number: 1545–0962.

Form Number: Publication 1075.

Abstract: Section 6103(p) of the Internal Revenue Code requires the Internal Revenue Service to provide periodic reports to Congress describing safeguard procedures utilized by agencies which receive information from the IRS to protect the confidentially of the information. This Code section also requires that these agencies furnish reports to the IRS describing their safeguards.

Current Actions: There are no changes being made to Publication 1075 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, state, local, or tribal governments.

Estimated Number of Respondents: 5,100.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 204,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 9, 2016.

R. Joseph Durbala,

IRS, Tax Analyst.

[FR Doc. 2016–19453 Filed 8–15–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 11, 2016.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 15, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Departmental Offices

OMB Control Number: 1505–0016.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital Form BQ–1, "Report of Customers' U.S. Dollar Claims on Foreign Residents".

Form: Form BQ–1.

Abstract: Form BQ–1 is required by law and is designed to collect timely information on international portfolio capital movements, in particular U.S. dollar claims of customers of U.S. resident financial institutions on foreign residents. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 1,492.

OMB Control Number: 1505–0017.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital Form BC, "Report of U.S. Dollar Claims of Financial Institutions on Foreign Residents''.

Form: Form BC.

Abstract: Form BC is required by law and is designated to collect timely information on international portfolio capital movements, in particular own U.S. dollar claims of U.S. resident financial institutions on foreign residents. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 51,660.

OMB Control Number: 1505–0018.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital Form BL–2, ''Report of Customers' U.S. Dollar Liabilities to Foreign Residents''.

Form: Form BL–2.

Abstract: Form BL–2 is required by law and is designed to collect timely information on international portfolio capital movements, in particular U.S. dollar liabilities of customers of U.S. resident financial institutions to foreign residents. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 11,081.

OMB Control Number: 1505–0019.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital Form BL–1, ''Report of U.S. Dollar Liabilities of Financial Institutions to Foreign Residents''.

Form: Form BL–1.

Abstract: Form BL–1 is required by law and is designed to collect timely information on international portfolio capital movements, in particular U.S. dollar liabilities of U.S. resident financial institutions to foreign residents. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 34,992.

OMB Control Number: 1505–0020.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital Form BQ–2, ''Part 1—Report of Foreign Currency Liabilities and Claims of Financial Institutions and of Their Domestic Customers' Foreign Currency Claims with Foreign Residents; and Part 2—Report of Customers' Foreign Currency Liabilities to Foreign Residents''.

Form: Form BQ–2.

Abstract: Form BQ–2 is required by law and is designed to collect timely information on international portfolio capital movements, in particular liabilities and claims of U.S. resident financial institutions, and of their domestic customers' liabilities and claims, with foreign residents, that are denominated in foreign currencies. This information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 6,210.

OMB Control Number: 1505–0024.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital (TIC) Form CQ–1, ''Report of Financial Liabilities to, and Financial Claims on, Unaffiliated Foreign Residents,'' and Form CQ–2, ''Report of Commercial Liabilities to, and Commercial Claims on, Unaffiliated Foreign-Residents''.

Form: Form CQ–1, Form CQ–2.

Abstract: Forms CQ–1 and CQ–2 are required by law to collect timely information on international portfolio capital movements, in particular data on financial and commercial liabilities to, and claims on, unaffiliated foreign residents held by non-financial enterprises in the U.S. This information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 3,832.

OMB Control Number: 1505–0189.

Type of Review: Revision of a currently approved collection.

Title: Treasury International Capital Form BQ–3, ''Report of Maturities of Selected Liabilities and Claims of Financial Institutions with Foreign Residents''.

Form: Form BQ–3.

Abstract: Form BQ–3 is required by law and is designed to collect timely information on international portfolio capital movements, in particular maturities of selected U.S. dollar and foreign currency liabilities and claims of U.S. resident financial institutions with foreign residents. This information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 6,510.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–19508 Filed 8–15–16; 8:45 am]

BILLING CODE 4810–25–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Tuesday,
No. 158 August 16, 2016

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 423 and 460
Medicare and Medicaid Programs; Programs of All-Inclusive Care for the Elderly (PACE); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 423 and 460

[CMS–4168–P]

RIN 0938–AR60

Medicare and Medicaid Programs; Programs of All-Inclusive Care for the Elderly (PACE)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and update the requirements for the Programs of All-Inclusive Care for the Elderly (PACE) under the Medicare and Medicaid programs. The proposed rule addresses application and waiver procedures, sanctions, enforcement actions and termination, administrative requirements, PACE services, participant rights, quality assessment and performance improvement, participant enrollment and disenrollment, payment, federal and state monitoring, data collection, record maintenance, and reporting. The proposed changes would provide greater operational flexibility, remove redundancies and outdated information, and codify existing practice.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 17, 2016.

ADDRESSES: In commenting, please refer to file code CMS–4168–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions for "submitting a comment."

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4168–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4168–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments before the close of the comment period to the following addresses:

a. For delivery in Washington, DC— Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD— Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Martha Hennessy, 410–786–0575.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Timely received comments will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Table of Contents

I. Executive Summary
  A. Purpose
  B. Summary of Key Economic Provisions
  C. Summary of Costs and Benefits
II. Background
  A. Program Description
  B. Legislative and Regulatory History
  C. PACE Regulatory Framework
III. Provisions of the Proposed Rule
  A. Proposed Global Change Regarding Quality Assessment and Performance Improvement
  B. Subpart A—Basis, Scope, and Definitions
  C. Subpart B—PACE Organization Application and Waiver Process
  D. Subpart C—PACE Program Agreement
  E. Subpart D—Sanctions, Enforcement Actions, and Termination
  F. Subpart E—PACE Administrative Requirements
  G. Subpart F—PACE Services
  H. Subpart G—Participant Rights
  I. Subpart H—Quality Assessment and Performance Improvement
  J. Subpart I—Participant Enrollment and Disenrollment
  K. Subpart J—Payment
  L. Subpart K—Federal/State Monitoring
  M. Subpart L—Data Collection, Record Maintenance, and Reporting
IV. Collection of Information Requirements
V. Response to Comments
VI. Regulatory Impact Statement

Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronym and its corresponding term in alphabetical order below:

BBA	Balanced Budget Act of 1997
BIPA	Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000
CMP	Civil Money Penalty
CMS	Centers for Medicare & Medicaid Services
COBRA	Consolidated Omnibus Budget Reconciliation Act of 1985
GAO	Government Accountability Office
HHS	U.S. Department of Health and Human Services
HPMS	Health Plan Management System
IDT	Interdisciplinary Team
IFC	Interim Final Rule with Comment Period
MA	Medicare Advantage
MAO	Medicare Advantage Organization
MMA	Medicare Prescription Drug, Improvement, and Modernization Act of 2003
MSP	Medicare Secondary Payer
OBRA	Omnibus Budget Reconciliation Act
OIG	Office of Inspector General
PACE	Programs of All-inclusive Care for the Elderly
PCA	Personal Care Attendants
PDP	Prescription Drug Plan
PO	PACE Organization
SAA	State Administering Agency
SSA	Social Security Act

I. Executive Summary

A. Purpose

The purpose of this proposed rule is to revise and update the requirements for the Programs of All-Inclusive Care for the Elderly (PACE) under the Medicare and Medicaid programs. The proposals address application and waiver procedures, sanctions, enforcement actions and termination, administrative requirements, PACE services, participant rights, quality assessment and performance improvement, participant enrollment and disenrollment, payment, federal and state monitoring, data collection, record maintenance, and reporting. The proposed changes would provide greater operational flexibility, remove redundancies and outdated information, and codify existing practice.

B. Summary of Key Economic Provisions

1. Compliance Oversight Requirements

Compliance programs, as found in the Medicare Advantage (MA) and Medicare Part D programs, have long been recognized as key to protecting against fraud, waste, and abuse. The importance of these programs has been highlighted by several of our oversight bodies. As is authorized by sections 1934(f)(3) and 1894(f)(3) of the Social Security Act (the Act), we are now proposing to adopt two key elements of the Part D compliance program in the PACE regulations. Specifically, we would require each PACE organization (PO) to develop compliance oversight requirements that would be responsible for monitoring and auditing their organization for compliance with our regulations. Additionally, we would require POs to have measures that prevent, detect and correct non-compliance with CMS's program requirements as well as measures that prevent, detect, and correct fraud, waste, and abuse. This mirrors what POs are currently required to do for their Part D operations and would simply extend the requirement to all of the PO's operations. We believe by creating a uniform requirement for all of the PO's operations, we are balancing the duty of a PO to ensure compliance with CMS requirements with the need for flexibility as a provider of service.

2. Monitoring and Oversight of PACE Organizations

As a result of our experience with oversight and monitoring of the PACE program, we are proposing flexibilities in connection with the current requirement that POs be monitored for compliance with the PACE program requirements during and after a 3-year trial period. We must balance the responsibilities of ensuring that all of our beneficiaries are receiving quality care with our duty to effectively manage our resources and ensure proper oversight over all of the programs we manage. We are proposing therefore to use technology to enhance efficiencies in monitoring by remotely reviewing PO documents, which we have to date reviewed primarily through site visits. We would reduce the number of onsite visits after the 3-year trial period by utilizing a risk assessment to select which POs will be audited each year. This risk assessment would rely largely on an organization's past performance and ongoing compliance with CMS and state requirements. However, the risk assessment would also take into account other information that could indicate a PO needs to be reviewed, such as participant complaints or access to care concerns.

C. Summary of Costs and Benefits

TABLE 1—SUMMARY OF COSTS AND BENEFITS

Provision description	Total costs to POs	Total cost to Government (without transfer)
Proposed Compliance Oversight Requirements.	We estimate a one-time cost of $353,668 per year, annualized for 3 years, for developing the written material and documents necessary for internal auditing and monitoring programs (119 PO × 150 hours per PO × 59.44 (hourly rate) divided by 3 (annualized over 3 years)). We further estimate an annual cost of $1,414,672 per year to update materials and for routine identification of risks (119 PO × 200 hours per PO × 59.44 hourly rate). Thus total cost would be $1.7 million in years 1 through 3 and $1.4 million afterwards.	
Monitoring	We estimate that there will be an annual savings to POs based on our proposal of $707,617.60. We expect 72 PO audits under the current regulations. We expect only 35 audits if the proposed regulation is finalized. The savings to PO would be the effort saved by not having to produce documentation and other administrative burdens that occur during an audit for 37 audits. Consequently, we are estimating the savings per audit for a PO to be approximately $19,124.80 (2 Health Service Managers at $50.99/hour × 2 (Factor for fringe benefits) × 80 hours per person plus 1 executive administrative assistant at $17.55/hour × 2 (Factor for fringe benefits) × 80 hours per person). Therefore the total savings to POs will be $19,124.80 × 37 = $707,617.60.	We estimate an annual savings of $1,029,455 to the government. We expect 72 PO audits under current regulations. We expect only 35 audits if the proposed regulation is finalized. The savings to us would be the effort saved by not having to perform 37 audits. The cost per audit is 2.5 FTE × $1,395 air-fare + 220 hours for GS–13s × $44.15/hr GS–13 wage × 2 (Fringe benefit factor) + 40 hours for GS–15s × $61.37/hr GS–15 wage × 2 (Fringe benefit factor) = $27,823. Hence the total savings is $27,832 × 37 = 1 million.

II. Background

A. Program Description

The Programs of All-Inclusive Care for the Elderly (PACE) program is a unique model of managed care service delivery for the frail elderly, most of whom are dually-eligible for Medicare and Medicaid benefits, and all of whom are assessed as being eligible for nursing home placement according to the Medicaid standards established by their respective states.

B. Legislative and Regulatory History

1. Demonstration Project

Section 603(c) of the Social Security Amendments of 1983 (Pub. L. 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272), authorized the original demonstration PACE program for On Lok Senior Health Services (On Lok) in San Francisco, California. Section 9412(b) of the Omnibus Budget Reconciliation Act (OBRA) of 1986 (Pub. L. 99–509), authorized CMS to conduct a PACE demonstration program to determine whether the model of care developed by On Lok could be replicated across the country. The number of sites was originally limited to 10, but the OBRA of 1990 (Pub. L. 101–508) authorized an increase to 15 PACE demonstration programs. The PACE demonstration program was operated under a Protocol published by On Lok, Inc. as of April 14, 1995.

The PACE model of care includes, as core services, the provision of adult day health care and interdisciplinary team (IDT) care management, through which access to and allocation of all health services is managed. Physician, therapeutic, ancillary, and social support services are furnished in the participant's residence or onsite at a PACE center. Hospital, nursing home, home health, and other specialized services are generally furnished under contract. Financing of the PACE demonstration model was accomplished through prospective capitation payments under both Medicare and Medicaid. Under section 4118(g) of the OBRA of 1987 (Pub. L. 100–203), PACE demonstration programs had to assume full financial risk progressively over the initial 3 years. As such authority was removed by section 4803(b)(1)(B) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), PACE demonstration programs approved after August 5, 1997 had to assume full financial risk at start-up.

2. Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33)

Section 4801 of the BBA authorized coverage of PACE under the Medicare program by amending title XVIII of Act to add section 1894 of the Act, which addresses Medicare payments and coverage of benefits under PACE. Section 4802 of the BBA authorized the establishment of PACE as a state option under Medicaid by amending title XIX of the Act and adding section 1934 of the Act, which directly parallels the provisions of section 1894 of the Act. Section 4803 of the BBA addresses implementation of PACE under both Medicare and Medicaid, the effective date, timely issuance of regulations, priority and special consideration in processing applications, and extension and transition for PACE demonstration project waivers.

As directed by section 4803 of the BBA, we published an interim final rule with comment period (IFC) on November 24, 1999, establishing requirements for PACE under sections 1894 and 1934 of the Act (64 FR 66234). The 1999 IFC was a comprehensive rule that addressed eligibility, administrative requirements, application procedures, services, payment, participant rights, and quality assurance under PACE.

3. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554)

The following three sections of BIPA modified the PACE program:

- Section 901 extended the transition period for the PACE demonstration programs to allow an additional year for these organizations to transition to the permanent PACE program.
- Section 902 gave the Secretary of Health and Human Services (the Secretary) the authority to grandfather in the modifications these programs had implemented as of July 1, 2000. This provision allowed the PACE demonstration programs to continue program modifications they had implemented and avoid disruptions in participant care where these modifications were determined to be consistent with the PACE model.
- Section 903 specifically addressed flexibility in exercising the waiver authority provided under sections 1894(f)(2)(B) and 1934(f)(2)(B) of the Act. It authorized the Secretary to modify or waive PACE regulatory provisions in a manner that responds promptly to the needs of PACE organizations (POs) relating to the areas of employment and the use of community-based primary care physicians. Section 903 of BIPA also established a 90-day review period for waiver requests. On October 1, 2002, we issued an IFC to implement section 903 of BIPA (67 FR 61496).

4. Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173)

On December 8, 2003, Congress enacted the MMA. Several sections of the MMA affected POs. Most notably, section 101 of the MMA affected the way in which POs are paid for providing certain outpatient prescription drugs to any Part D eligible participant. The MMA altered the payment structure for Part D drugs for POs by shifting the payer source for PACE enrollees who are full-benefit dual-eligible individuals from Medicaid to Medicare, and, in part, from the beneficiary to Medicare for individuals that are not full-benefit dual-eligible beneficiaries who elect to enroll in Part D. The MMA did not affect the manner in which POs are paid for the provision of outpatient prescription drugs to non-part D eligible PACE participants.

Section 101 of the MMA added section 1860D–21(f) of the Act, which provides that POs may elect to provide qualified prescription drug coverage to enrollees who are Part D eligible individuals. The MMA allows CMS the flexibility to deem POs as MA–PD local plans and to treat POs that elect to provide qualified drug coverage in a manner similar to MA–PD local plans. Due to inconsistencies in the PACE and MMA statutes, we chose to treat POs in a similar manner as MA–PD plans, thereby avoiding conflicting requirements. The requirements that apply to POs that elect to provide qualified prescription drug coverage to Part D eligible enrollees are described in section II.T.3. of the January 2005 Part D final rule (70 FR 4426 through 4434).

In addition, section 236 of the MMA amended the Act to extend to POs the existing statutory Medicare and Medicaid balance billing protections that had previously applied to POs under the PACE demonstration program authority.

Section 301 of the MMA amended the Medicare Secondary Payer (MSP) provisions in section 1862(b) of the Act. These amendments clarify the obligations of primary plans and primary payers, the nature of the insurance arrangements subject to the MSP rules, the circumstances under which Medicare may make conditional payments, and the obligations of primary payers to reimburse Medicare. To implement section 301 of the MMA, we issued an IFC published in the February 24, 2006 **Federal Register** (71 FR 9466). The provisions in the IFC were finalized in a final rule published in the February 22, 2008 **Federal Register** (73 FR 9679). The IFC revised pertinent MSP regulations found at 42 CFR part 411. Our PACE regulations at § 460.180(d) specify that Medicare does not pay for PACE services to the extent that Medicare is not the primary payer under part 411. The MSP regulations found at 42 CFR part 411 set forth our current policies regarding MSP obligations involving other payers.

5. 2006 PACE Final Rule

On December 8, 2006, we issued a final rule (71 FR 71244) (hereinafter 2006 final rule) that finalized both the PACE IFC published in the November 24, 1999 **Federal Register** (64 FR 66234) and the PACE IFC published in the October 1, 2002 **Federal Register** (67 FR 61496).

For a complete history of the PACE program, please see the 2006 final rule (71 FR 71244 through 71248).

C. PACE Regulatory Framework

Sections 1894(f) and 1934(f) of the Act set forth the requirements for issuing regulations to carry out sections 1894 and 1934 of the Act. Sections 1894(f)(2) and 1934(f)(2) of the Act state that the Secretary must incorporate the requirements applied to PACE demonstration waiver programs under the PACE Protocol when issuing interim final or final regulations, to the extent consistent with the provisions of sections 1894 and 1934 of the Act. However, the Secretary may modify or waive these provisions under certain circumstances. Sections 1894(a)(6) and 1934(a)(6) of the Act define the PACE Protocol as the Protocol for PACE as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon between the Secretary and On Lok, Inc. We issued the 1999 and 2002 IFCs and the 2006 final rule under authority of sections 1894(f) and 1934(f) of the Act.

We believe sections 1894(f) and 1934(f) of the Act primarily apply to issuance of the initial interim and final PACE program regulations because they refer to the PACE Protocol,[1] which has now been replaced by the PACE program agreement.[2] Sections 1894(f)(2)(B) and 1934(f)(2)(B) of the Act permit the Secretary to modify or waive provisions of the PACE Protocol as long as any such modification or waiver is not inconsistent with and does not impair any of the essential elements, objectives, and requirements of the PACE Protocol and, in particular, does not modify or waive any of the following five provisions:

- The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.
- The delivery of comprehensive integrated acute and long-term care services.
- The interdisciplinary team approach to care management and service delivery.
- Capitated, integrated financing that allows the PO to pool payments received from public and private programs and individuals.
- The assumption by the PO of full financial risk.

While we believe sections 1894(f) and 1934(f) of the Act no longer have direct application to the PACE program in many respects, we believe the limitations on waivers and modifications continue to apply to updates to the PACE program to the extent the updates concern essential elements, objectives, and requirements of the PACE Protocol, as replaced by the PACE program agreement, or any of the five listed provisions.

III. Provisions of the Proposed Rule

In this proposed rule, we are proposing to revise and update the policies finalized in the 2006 final rule to reflect subsequent changes in the practice of caring for the frail and elderly and changes in technology (for example, the use of electronic communications, including email, and the automation of certain processes) based on our experience implementing and overseeing the PACE program. PACE has proven successful in keeping frail, older individuals, many of whom are eligible for both Medicare and Medicaid benefits (dual eligibles), in community settings.[3] However, it is necessary to revise some regulatory provisions to afford more flexibility to POs and state administering agencies (SAAs) as a means to encourage the expansion of the PACE program to more states, thus increasing access for participants, and to further enhance the program's effectiveness at providing care while reducing costs. Therefore, we are proposing a number of flexibilities in this rule, including allowing non-physician medical providers practicing within the scope of their state licensure and clinical practice guidelines to serve in place of primary care physicians in some capacities, and permitting POs to better tailor the IDTs to improve efficiency, while continuing to meet the needs of their participants.

A. Proposed Global Change Regarding Quality Assessment and Performance Improvement

Part 460 encompasses all of the regulatory provisions pertaining to PACE. We are proposing to replace all references to "quality assessment and performance improvement" in part 460 of the regulations (including subpart and section headings) with "quality improvement." We are proposing this change because, in practice, the term "quality improvement" is used by the POs, SAAs, CMS, and the industry when referring to quality assessment and performance improvement for POs. Furthermore, the term "quality improvement" is used to mean the same thing in other CMS programs, such as the CMS Quality Improvement Organization Program and the Medicare Advantage Quality Improvement Program, so this change would allow for consistency in use of language across CMS programs. This would be a change in terminology only and would not designate a change in the requirements for the PACE quality program. While we are proposing to implement this change in every place that contains the term "quality assessment and performance improvement", we are only discussing our rationale for this proposed change in this section of the preamble. This proposed change would affect the following sections and headings in the current regulations: §§ 460.32(a)(9), 460.60(c), 460.62(a)(7), 460.70(b)(1)(iii), 460.120(f), 460.122(i), 460.130(a), 460.132(a) and (c)(3), 460.134(a), 460.136(a), (b), and (c), 460.138(b), and 460.172(c), and the headings of subpart H and §§ 460.132, 460.134, and 460.136. As discussed in section III.I.3., we are proposing to remove § 460.140 in its entirety, so we would not need to change the reference in that section.

B. Subpart A—Basis, Scope, and Definitions

1. Proposed Part D Program Requirements (§ 460.3)

In the 2006 final rule (71 FR 71248), we indicated that MA–PD requirements with respect to Part D prescription drug coverage would apply to POs that elect to provide qualified Part D prescription drug coverage. However, the PACE regulations make no mention of Part D program requirements. To clarify this policy, we are proposing to add § 460.3, "Part D Program Requirements," to state that the POs offering qualified prescription drug coverage and meeting the definition of a Part D plan sponsor (as defined at § 423.4) must abide by all applicable Part D program requirements in part 423. When we issue Part D program guidance we often receive questions regarding applicability to PACE and it has been our experience that POs are not always aware they must comply with Part D requirements unless a specific requirement has been waived. (For a list of the Part D regulatory requirements that are waived for POs, see section 2.5 of the Part D Application for new POs, available at *https://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/RxContracting_ApplicationGuidance.html.*) We believe this proposed change is consistent with our current policy and does not involve any change in the current treatment of POs offering qualified Part D prescription drug coverage.

---

[1] *https://www.gpo.gov/fdsys/pkg/FR-1999-11-24/pdf/99-29706.pdf.*

[2] *https://www.cms.gov/Medicare/Health-Plans/pace/downloads/programagreement.pdf.*

[3] The Medicare Payment Advisory Commission's June 2012 Report to the Congress, Medicare and the Health Care Delivery System, pp. 76–77, available at *http://www.medpac.gov/documents/reports/jun12_entirereport.pdf.*

C. Subpart B—PACE Organization Application and Waiver Process

1. Purpose (§ 460.10)

In this section, we propose changes to part 460, subpart B. Section 460.10 describes the purpose of subpart B, which sets forth the processes for an entity to apply to become a PO and to apply for a waiver of certain regulatory requirements. We are proposing to revise this section to add a new paragraph (a) to address the application process and a new paragraph (b) in which we are proposing to move the current language in this section regarding the waiver process.

As discussed in section III.C.2. of this proposed rule, we are proposing to revise the regulations in subpart B to describe the process for a PO to seek approval from CMS to expand a service area and/or add a new PACE center site. Therefore, we are proposing to amend § 460.10 by adding language regarding the application procedures for expanding an existing service area and/or adding a new PACE center site. This section would still introduce the subpart that sets forth the application procedures for applying to become a PO.

2. Application Requirements (§ 460.12)

Section 460.12 sets forth the application requirements for an organization that wishes to participate in the PACE program. Section 460.12(a) currently requires an individual authorized to act for an entity to submit a complete application to CMS that describes how the entity meets all requirements in part 460 if the entity seeks approval from CMS to become a PO. As set forth in our PACE manual, an application must also be submitted for a PO that seeks to expand its service area and/or add a new PACE center site (see PACE Manual, Ch. 17, Sections 20.4 through 20.7). There are three scenarios specified in the PACE manual under which a PO may expand operations: (1) It may expand its geographic service area without building additional sites; (2) it may open another physical site in the existing geographic service area; and (3) it may expand its geographic service area and open another physical site in the expanded area. Currently, POs are required to submit an application to CMS and the SAA to expand their geographic service area and/or add a new PACE center to their PO. In October 2004, we released the PACE Expansion Application, available at *http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/integrating-care/program-of-all-inclusive-care-for-the-elderly-pace/pace-4-states.html.* This application is for existing POs that wish to expand their geographic service areas, and/or add a new PACE center to their PO.

As with initial applications, our guidance requires POs to submit an expansion application to CMS through the SAA. However, current regulations do not specify a process for POs to submit, and the SAA and CMS to approve, an expansion application. Therefore, we are proposing amending § 460.12(a) to specify that it also applies to expansion applications submitted by existing POs that seek to expand their service area and/or to add a PACE center site. Specifically, we are proposing to add language in § 460.12(a) that an individual authorized to act for a PO that seeks to expand its service area and/or add a PACE center site must submit a complete application to CMS that describes how the PO meets all requirements in this part. We believe including this requirement in § 460.12 will help ensure POs understand our current practice of requiring an expansion application for a PO that seeks to expand its service area and/or add a PACE center site.

We also are proposing to add the phrase "in the form and manner specified by CMS" to § 460.12(a) when describing the submission to CMS of a complete application to become a PO or to expand a service area and/or add a PACE center, to allow for submission of applications and supporting information in formats other than paper, which is currently required. These applications are often hundreds of pages long, expensive to reproduce and transmit, and administratively inefficient, as staff reviewing different parts of the application are located in different physical locations and must receive hard copies of the material. To adapt to the increased use of electronic communications, electronic health records, and electronic data storage and exchange, we must continuously update the form and manner by which we administer our programs. We have successfully transitioned the Medicare Advantage application and Prescription Drug Plan (PDP) application to a fully electronic submission process, enabling a more organized and streamlined review, and would like to bring those same efficiencies to the PACE application process. We will provide further guidance on this process through HPMS or similar electronic system that may replace HPMS. POs and applicants may also refer to the CMS online tools for application submission at *http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Integrating-Care/Program-of-All-Inclusive-Care-for-the-Elderly-PACE/Program-of-All-Inclusive-Care-for-the-Elderly-PACE.html.*

Section 460.12(a)(2) provides that we would accept applications from entities that seek approval as POs beginning on February 22, 2000, except we would accept applications on earlier dates for certain entities that qualify for priority processing or special consideration. We established this provision and two other sections of the PACE regulations, previously found at § 460.14 and § 460.16, to implement section 4803(c) of the BBA of 1997. Section 4803(c) directed us to give priority in processing applications, during the 3-year period following enactment of the BBA of 1997, to PACE demonstration programs and then to entities that had applied to operate a PACE demonstration program as of May 1, 1997. In addition, section 4803(c) of the BBA of 1997 required that we give special consideration in the processing of applications during the 3 years following enactment to any entity that as of May 1, 1997, had indicated specific intent to become a PO through formal activities such as entering into contracts for feasibility studies. In the 2006 final rule (71 FR 71253), we deleted § 460.14 (Priority Consideration) and § 460.16 (Special Consideration) because the authority to provide these considerations expired on August 5, 2000. For the same reason, we are proposing to delete paragraph (a)(2) of § 460.12, as it is no longer applicable.

Section 460.12(b) provides that an entity's application must be accompanied by an assurance from the SAA of the state in which the program is located indicating that the state (1) considers the entity to be qualified to be a PO and (2) is willing to enter into a PACE program agreement with the entity. However, we have received applications without the required SAA assurance. To help ensure that our current policy is clear, we are proposing to revise the language to require that the entity's application to become a PO include an assurance from the SAA that the state considers the entity to be qualified to be a PO and the state is willing to enter into a PACE program agreement with the entity. We want entities to understand that we would not consider an application to become a PO to be complete without assurance from the SAA that the state both considers the entity to be qualified be a PO and is willing to enter into a PACE program agreement with the entity. We would not review applications that do not include this assurance.

Similarly, we are also proposing to redesignate paragraphs (b)(1) and (2) as § 460.12(b)(1) and add a new paragraph (b)(2) to codify the current requirement in the PACE expansion application that a PO's application to expand its service area and/or add a new PACE center site must include an assurance from the SAA that the state is willing to amend the PACE program agreement to include the new PACE center sites and/or expand the PO's service area. We also expect, as we stated in the preamble to the 1999 IFC for initial applications (64 FR 66238), that the SAA will verify that an applying entity has qualified administrative and clinical staff employed or under contract prior to furnishing services to participants in the expanded service area.

We also are proposing to move the language in § 460.22, which requires an entity to state in its application the service area it proposes for its program, and provides that CMS (in consultation with the SAA) may exclude an area already covered under another PACE program agreement, to proposed paragraph § 460.12(c) and remove § 460.22. In proposed § 460.12(c)(1), we would specify that both an entity submitting an application to become a PO and a PO submitting an application seeking to expand its service area must describe the proposed service area in their application. We also propose to make a corresponding change to the Medicare Part D definition of "Service area" in § 423.4 for PACE plans offering qualified prescription drug coverage by removing the reference to "§ 460.22 of this chapter" and adding in its place "§ 460.12(c) of this chapter," as our proposed changes would move the language currently in § 460.22 to § 460.12(c).

Finally, to codify CMS's current practice regarding the permissibility of POs to expand their service area and/or add a new PACE center site (see PACE Manual, Ch. 17, Section 20.4), we are proposing to add § 460.12(d), which would provide that CMS and the SAA will only approve an expansion application after the PO has successfully completed its first trial period audit and, if applicable, has implemented an acceptable corrective action plan.

We believe all of these changes to § 460.12 would streamline the regulations and make the requirements clear, consistent with the PACE statutes. If we finalize these proposals, we will provide subregulatory guidance on application submission requirements after publication of the final rule.

3. CMS Evaluation of Applications (§ 460.18)

Section 460.18 describes the information that CMS uses to evaluate an application under PACE; however, this does not take into account all the potential sources of information that may be a part of the evaluation process, including information used in the evaluation of applications submitted for a PO that seeks to expand its service area and/or new PACE center site. Currently, § 460.18(b) specifies that CMS will use information obtained through on-site visits conducted by CMS or the SAA. Section 460.18(c) provides that CMS will use information obtained by the SAA. As discussed earlier in this section, we are proposing to revise our regulations to reflect that an application also must be submitted for a PO that seeks to expand its service area and/or add a new PACE center site. In evaluating expansion applications, CMS may consider additional information beyond that contained in the application itself, information obtained through on-site visits, or information obtained through the SAA. For example, our review of a service area expansion application might include information obtained from financial reviews, as well as the results from ongoing monitoring visits. Therefore, we propose to combine the language currently in § 460.18(b) and (c) in revised § 460.18(b) and delete § 460.18(c). The revised § 460.18(b) would state that CMS uses information obtained by CMS or the SAA through on-site visits or any other means. This change would take into account the additional information that we use to review any PACE application, including applications to expand a PO's service area or add a new PACE center site. We are also proposing to make a conforming change to the introductory language in § 460.18 to reflect the review of expansion applications, by deleting "for approval as a PACE organization."

4. Notice of CMS Determination (§ 460.20)

Section 460.20 describes requirements for CMS to notify PACE applicants of the status of PACE applications. Currently, § 460.20 only specifies the requirements for CMS determination of applications submitted by entities seeking to become POs. As previously discussed in this section, we are proposing to amend the regulations in subpart B to include, in addition to requirements for applications from entities seeking to become POs, requirements for applications submitted by existing POs for service area and/or PACE center site expansions. In conjunction with that proposal, we are proposing changes to § 460.20 to also include specific language regarding the notification requirements for CMS determination of applications to expand a PO's service area and/or to add a new PACE center.

The current requirements in § 460.20 implement sections 1894(e)(8) and 1934(e)(8) of the Act, which require that an application for PO status be deemed approved unless the Secretary, within 90 days after the date of the submission of the application to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information that is needed in order to make a final determination with respect to the application. The Act further states that, after the date of receipt of any additional requested information from the applicant, the application must be deemed approved unless the Secretary, within 90 days of such date, denies such request.

While the Act requires that CMS provide notice to entities seeking to become POs of its determination within 90 days, the Act does not set out requirements for applications submitted by existing POs to expand their service area and/or to add a new PACE center site. We have published expansion application requirements in Chapter 17 of the PACE manual, available at *http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs-Items/CMS019036.html*. Under that guidance, a PO is required to submit an expansion application when the PO is seeking to (1) expand its geographic service area; (2) add a new PACE center; or (3) expand its geographic service area and add a new PACE center.

The guidance provides that, when a PO submits an expansion application to expand its geographical service area without building additional sites, CMS has 45 days to request additional information from the PO, approve the application, or deny the application. Similarly, when a PO submits an expansion application to add a new PACE center in the existing service area, CMS has 45 days to request additional information from the PO, approve the application, or deny the application. In these scenarios, if CMS requests additional information and the applicant provides the requested information, CMS has an additional 45 days to review and either approve or deny the expansion application. The second 45-day review period in this scenario only commences once CMS has received all of the additional requested material. If the applicant submits additional information per CMS's request, but CMS determines that there is still outstanding information requested from the applicant, CMS notifies the applicant and the additional 45-day review period does not begin until all requested information is received. Once CMS has received all of the requested information, CMS sends a letter to the applicant indicating that the second 45-day review period has commenced.

In the third scenario, when a PO submits an expansion application to expand its geographic service area and open a new PACE center site, CMS has 90 days to request additional information from the PO, approve the application, or deny the application. In this scenario, if CMS requests additional information and the PO provides the requested information, CMS has an additional 90 days to review and either approve or deny the expansion application. The second 90-day review period in this scenario only commences once CMS has received all of the additional requested material. If the applicant submits additional information per CMS's request, but CMS determines that there is still outstanding information requested from the applicant, CMS notifies the applicant and the additional 90-day review period does not begin until all requested information is received. Once CMS has received all of the requested information, CMS sends a letter to the applicant indicating that the second 90-day review period has commenced.

We are proposing to codify CMS's current sub-regulatory requirements for notifying POs of CMS's determination regarding service area and PACE center site expansion applications so the regulations include all of the relevant application timing requirements. Specifically, we are proposing to amend § 460.20(a) to make it clear that the notice of CMS determination applies to all three types of applications listed in proposed § 460.10(a), and that the 90-day time limit applies, except for applications to expand the service area or add a new PACE center site.

First, we are proposing to delete § 460.20(a)(3) and revise § 460.20(b). Currently, § 460.20(a) states that CMS will approve or deny, or request additional information on, a "complete application" within 90 days after submission of the application. We believe it is confusing to state that an application is complete if we are requesting additional information. Therefore, we are proposing to delete § 460.20(a)(3), which is the provision that describes CMS requesting additional information needed to make a final determination, and to revise § 460.20(b) to state that an application is only considered complete when CMS receives all information necessary to make a determination regarding approval or denial. Note that we would not consider the application complete without the required state assurance. We also propose to revise § 460.20(a) to specify that the time limit for CMS notification of determination is 45 days for expansion applications where a PO seeks to expand its service area or add a new PACE center.

Next, we are proposing that § 460.20(b) through (d) be redesignated as § 460.20(c) through (e) and revised as follows. We are proposing that new § 460.20(c) describe the process if CMS determines that the application is not complete because it does not include sufficient information for CMS to make a determination. Specifically, CMS would inform the entity that the application is not complete and request the additional information, and within 90 days (or 45 days for a service area or new PACE center expansion application) of CMS receiving all requested information from the entity, CMS would approve the application or deny it and notify the entity in writing of the basis of the denial and the process for requesting reconsideration of the denial. We are proposing these changes because it is not possible for CMS to make an informed decision to approve or deny an application in situations where we do not have all of the pertinent information. We would consider the State Readiness Review, which SAAs conduct to determine the PO's readiness to administer the PACE program and enroll participants, as information necessary to make our final determination and would ask for its submission in all requests for additional information if we did not already have this information. Further, if more than 6 months elapse between the date of submission of the application and the response to the CMS request for additional information, the entity is required to update the application to provide the most current information and materials related to the application; otherwise, we would consider the application incomplete. We propose to revise § 460.20(c) accordingly.

Section 460.20(b), which we are proposing to redesignate as § 460.20(c), currently outlines the requirements for POs when CMS requests from an entity additional information needed to make an application determination. As noted previously, we are proposing to amend the language in this provision to address the different time limits for expansion applications. We are also proposing to amend the language to specify that the time limits in § 460.20(a) do not begin until CMS receives all requested information and the application is complete. With the proposed changes to § 460.20(a) and the proposed addition of § 460.20(b), it is no longer necessary to describe CMS's review process after all requested information has been received; thus we would remove § 460.20(b)(1) and (2). Section 460.20(c), which we are proposing to redesignate as § 460.20(d), currently implements sections 1894(e)(8) and 1934(e)(8) of the Act and provides that an application for PO status will be deemed approved if CMS fails to act on it within 90 days of the date the application is submitted or the date CMS receives all requested additional information. We are proposing to amend this language to specify deemed approval will occur if CMS fails to act after the later of those dates, and that it only applies to entities submitting applications to become a PO, not expansion applications from existing POs. We believe this revision is necessary because, as described previously, we are proposing to address expansion applications in the regulations, and we want to make it clear that only initial applications will be deemed approved if CMS fails to act on them within the required time period. As previously noted, the PACE statutes do not set out requirements for applications submitted by existing POs to expand their service area and/or to add a new PACE center site. CMS does not currently employ "deemed approval" for expansion applications, and we do not believe there is any reason to do so for these applications at this time. We are further proposing to amend this language by specifying that the 90-day period commences after CMS has received a "complete" application, as this is consistent with the proposed amendments to § 460.20(a) and (b).

Finally, § 460.20(d) currently states that for purposes of the 90-day time limit described in this section, the date that an application is submitted to CMS is the date on which the application is delivered to the address designated by CMS. We are proposing to redesignate § 460.20(d) as § 460.20(e), and revise this paragraph to refer to the time limits described in this section to include applications for service area expansions or new PACE center sites.

5. Service Area Designation (§ 460.22)

As discussed in section III.C.2. of this proposed rule, we are proposing to move the content of § 460.22, in its entirety but with a few revisions, to § 460.12(c). Therefore, we are proposing to delete § 460.22.

6. Submission and Evaluation of Waiver Requests (§ 460.26)

Section 460.26 sets forth the process for submitting and evaluating waiver requests. We are proposing to revise current § 460.26(a)(1) and (2) so that § 460.26(a)(1) would state that a PO, or an entity submitting an application to become a PO, must submit its waiver request through the SAA for initial review. Paragraph (a)(1) would also specify that the SAA forwards waiver requests to CMS along with any concerns or conditions regarding the waiver. Section 460.26(a)(2) would state that entities submitting an application to become a PO may submit a waiver request as a document separate from the application or in conjunction with and at the same time as the application. While we are not proposing any policy changes with these proposed revisions, we believe these changes would make the requirements for submission of the waiver request more concise and clear. We plan to provide additional detail on this part of the process in subregulatory guidance.

Section 460.26(b) states that CMS evaluates a waiver request from a PO on the basis of certain information. We are proposing to add "or PACE applicant" after "PACE organization" because a waiver request can be submitted by an existing PO or a PACE applicant (an entity that has applied to be a PO but is not yet a PO, or a PO applying to expand its service area and/or add a new PACE center site).

7. Notice of CMS Determination on Waiver Requests (§ 460.28)

Section 460.28 discusses the time frames for CMS determination and notification regarding approval or denial of waiver requests. We established this section to implement section 903 of BIPA, which provides in relevant part that the Secretary "shall approve or deny a request for a modification or a waiver . . . not later than 90 days after the date the Secretary receives the request." We are proposing to retain most of the language in current § 460.28(a), but to specify that the 90-day time limit starts after CMS receives a complete waiver request. We discuss the need for a complete waiver request in subsequent paragraphs. In § 460.28(a), we propose to revise the heading to "General," delete the reference to a denial being "in writing," and state that CMS will take action on the complete waiver request in the form and manner specified by CMS. We are proposing these changes to reflect how we provide notification, whether it be electronically or in another format. It should be noted that CMS would not only provide notification verbally. We propose to redesignate § 460.28(a)(2) as new § 460.28(a)(3).

We propose to add a new § 460.28(a)(2) to address conditional approval of a waiver request from a PACE applicant when the application is still pending. Under CMS's current process, a PACE applicant may request a waiver while its application is still pending and receive either a denial of the waiver request or a conditional approval of the waiver request. The approval of the waiver request is conditioned on the approval of the application. CMS will only issue conditional approvals to entities with pending applications. Issuing a conditional approval enables CMS to adhere to the BIPA 90-day timeframe for making a determination with respect to a waiver request in situations where an application is still under review. Waiver requests that are not associated with a pending application will either receive an approval or denial.

In addition, we are proposing to remove the language in § 460.28(b) regarding the date of receipt of the waiver, because our proposed changes to § 460.28(a) and (b) make it clear that the 90-day clock will start on the day CMS receives a complete waiver request. We are also proposing to change current paragraph (c)(1) regarding deemed approval of a waiver request to refer to CMS failing to act within 90 days of receipt of a complete waiver request, and redesignate it as paragraph (c). CMS will notify POs to confirm receipt of "complete" waiver requests.

We are proposing new language in § 460.28(b) regarding additional information requests for waivers. Unlike sections 1894(e)(8) and 1934(e)(8) of the Act, which give CMS 90 days to request additional information from entities applying to become POs, section 903 of BIPA does not explicitly impose a time limit for CMS to request additional information that is necessary to make a determination on a waiver request. In the 2006 final rule, we stated that there is "no statutory authority to stop the 90-day clock if additional information is necessary to make a determination on a waiver request." (71 FR 71255). Although we cannot stop the clock, we believe the statute can be read to start the 90-day clock upon CMS's receipt of a complete waiver request. We therefore are proposing in new paragraph (b) that a waiver request is complete when CMS receives all information necessary for CMS to make a determination regarding approval or denial. If CMS determines that the waiver request is not complete, CMS would request additional information needed to make a determination. The 90-day clock would start when CMS receives the complete waiver request. We are proposing these changes because it is not possible to make an informed decision to approve or deny a request for a waiver in situations where we do not have all of the pertinent information. Further, we believe this change would reduce the administrative burden on CMS as well as the POs because, currently, CMS denies incomplete waiver requests and POs must resubmit new waiver requests that include the missing information. Under the proposed process, CMS and the PO would work together to ensure that the request includes all necessary information, which should alleviate the need to resubmit a waiver request.

This is similar to the proposed treatment of PACE applications, and we believe consistency in review procedures would be helpful to all parties involved. We also note that approval of a waiver associated with a PACE application is contingent upon the approval of that PACE application because there is nothing to waive if there is no PACE program. Accordingly, waivers that are submitted for review in conjunction with a PACE application or while a PACE application is being reviewed would only be approved if that application is approved. As previously discussed, we propose to add a new § 460.28(a)(2) that provides for conditional approval for entities with a pending application to become a PO.

Currently, § 460.28(c)(2) allows CMS to withdraw its approval of a waiver for good cause. We are proposing to redesignate this provision as paragraph (d)(1) and amend it to provide that CMS "in consultation with the" SAA may withdraw approval of a waiver request for good cause. We are proposing to add this language because any significant change to the PACE program agreement, which includes waivers, should be made in consultation with the SAA because the SAA also is a signatory of the agreement. We are proposing in § 460.28(d)(2) that, if the waiver approval is withdrawn, CMS must notify the PO or PACE applicant and the SAA that approval of a waiver has been withdrawn and specify the reason for withdrawal and the effective date of the withdrawal in the notice. Currently, while the regulation enables CMS to withdraw an approval of a waiver request, it does not require that we notify the PO or PACE applicant and the SAA of the withdrawal, the reason for withdrawal, or the date when the withdrawal would be effective. We believe this information is critical to the PO or PACE applicant and the SAA because it likely would require a change in operation of the PO or could change how an applicant would operate a PO if its application is approved.

D. Subpart C—PACE Program Agreement

1. Content and Terms of PACE Program Agreement (§ 460.32)

Section 460.32 specifies the required and optional content of a PACE program agreement. Under § 460.32(a)(12), a PACE program agreement must contain information about the Medicaid capitation rate and the methodology used to calculate the Medicare capitation rate. This requirement is based on sections 1934(d)(2) and 1894(d)(2) of the Act, which provide that the Medicaid capitation amount and the Medicare capitation amount, respectively, to be applied for a PO for a contract year must be an amount specified in the PACE program agreement for the year.

Section 460.32(a)(12) and § 460.180(b) require the PACE program agreement to specify the methodology used to calculate the Medicare capitation rate, as opposed to the actual rate. The PACE Medicare rate is based on Part A and B payment rates established for purposes of payments to Medicare Advantage organizations and is subject to certain other adjustments (see § 460.180). For the Medicaid capitation rate, however, our current regulations require the PACE program agreement to specify the actual amount negotiated between the POs and the SAA (see § 460.32(a)(12) and § 460.182(b)).

As states are moving toward more managed care delivery systems for the long term care population, some states are redesigning their methodologies for developing PACE Medicaid capitation rates to more closely align with these other managed care delivery systems. Some of the new methodologies result in Medicaid payment variations based on factors such as frailty adjustments and performance incentive payments. Additionally, because many states update their PACE Medicaid capitation rates annually based on the state fiscal year, there are operational challenges associated with updating the PACE program agreement appendices to reflect changes to the Medicaid rates because they are not necessarily updated consistent with a PACE program agreement's contract year. As a result, we believe it is not always practical to include the actual Medicaid capitation rates in the PACE program agreement. Therefore, we are proposing to amend § 460.32(a)(12) to require that the program agreement include the Medicaid capitation rates or Medicaid payment rate methodology, as well as the methodology used to calculate the Medicare capitation rate. Medicaid capitation rates are developed and updated by the states (in negotiation with the POs) and approved by CMS. Operationally, states submit documentation to CMS to support their proposed PACE Medicaid capitation rates. CMS reviews the documentation to ensure the proposed rates are in compliance with the requirements of § 460.182, and provides the state with written approval of the rates. The Medicaid capitation rates are then communicated to the POs by the state in writing.

We are also interested in seeking, more generally, comments regarding other modifications we might make to the required content of the PACE program agreement, specifically, those cited at § 460.32(a) and § 460.182(d). We are particularly interested in comments regarding the need for capturing the level of detail currently required within the agreement itself, along with updated information as may be necessary throughout the contract period. Much of the required program agreement content relates to operational components of the PO's program. Our expectation is that POs regularly review and update this information, particularly as it relates to policies and procedures, to ensure its business practices are current, in accordance with regulation and guidance, and are consistently employed. We request comment on whether specific policies and procedures, and other existing requirements should continue to be part of the PACE program agreement.

E. Subpart D—Sanctions, Enforcement Actions, and Termination

1. Violations for Which CMS May Impose Sanctions (§ 460.40)

To support PACE program integrity and to protect PACE participants, we are proposing to amend provisions related to enforcement actions we may take when POs fail to comply with the PACE program agreement and/or program requirements. Currently, § 460.50 identifies some causes for CMS or an SAA to terminate a PACE agreement. Provisions authorize terminating for cause in circumstances including, but not limited to, uncorrected failure to comply substantially with conditions of the PACE program or with the terms of the PACE agreement, and inability to ensure the health and safety of participants, such as the presence of deficiencies that CMS or the SAA determines cannot be corrected. While current regulations reflect CMS and the SAA's authority to terminate an organization in these circumstances, we believe that we need to clarify our authority with respect to alternative enforcement actions in the form of sanctions or civil money penalties (CMPs).

We propose adding a new provision to § 460.40, designated as paragraph (b), to allow CMS the discretion to take alternative actions in the form of sanctions or CMPs when we are authorized to terminate a PO's PACE program agreement. Consistent with the authorizations in sections 1894(e)(6)(B) and (f)(3) and sections 1934(e)(6)(B) and (f)(3) of the Act, this new provision aligns the PACE enforcement structure with the enforcement structure that applies to the Medicare+Choice program, renamed, and hereinafter referred to, as the Medicare Advantage program. The Medicare Advantage program enforcement authorities in sections 1857(g)(3) and (4) of the Act allow CMS the discretion to take enforcement actions in the form of sanctions or CMPs when CMS is authorized to terminate the organization's contract. We propose that this authority also be utilized in the PACE program, consistent with our statutory authority identified in section 1894(c)(6)(B) and 1934(e)(6)(B) of the Act to promote consistency with the enforcement structure of the Medicare Advantage program. This change will give CMS the discretion to impose sanctions and CMPs on POs for continued noncompliance, in addition to our current authority to take the most extreme action of termination of the PACE program agreement. To add paragraph (b), we are proposing to redesignate the introductory language in § 460.40 as paragraph (a) and redesignate paragraphs (a) through (i) as paragraphs (a)(1) through (9).

2. Civil Money Penalties (§ 460.46)

Due to the redesignation of paragraphs in § 460.40, we also are proposing to make technical, non-substantive changes to the citations in this section to reflect the substantive and technical changes discussed above.

Specifically, we are amending § 460.46(a)(1) by removing the reference "§ 460.40(c) or (d)" and adding in its place the reference "§ 460.40(a)(3) or (4)". We are proposing to amend § 460.46(a)(2) by removing the reference "§ 460.40(e)" and adding in its place the reference "§ 460.40(a)(5)". We are also proposing to amend § 460.46(a)(3) by removing the reference "§ 460.40(f)(1)" and adding in its place the reference "§ 460.40(a)(6)(i)". These changes reflect the new numbering of § 460.40 that was discussed previously in this proposed rule.

Additionally, we are adding a new note to § 460.46(a), in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Sec. 701 of Pub. L. 114–74). The 2015 Act requires agencies to adjust the civil money penalties annually for inflation. The Department of Health and Human Services will publish all of the Department's adjusted CMP amounts at 42 CFR 1003.102. To ensure transparency, we have added a note stating that the penalty amounts are adjusted for inflation and citing to 42 CFR 1003.102.

F. Subpart E—PACE Administrative Requirements

1. PACE Organizational Structure (§ 460.60)

Sections 1894(a)(3)(A)(i) and 1934(a)(3)(A)(i) of the Act require a PO to be (or be a distinct part of) a public entity or a private, nonprofit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986. We implemented these provisions in § 460.60(a), which provides that a PO must be, or be a distinct part of, either (1) an entity of city, county, state, or Tribal government or (2) a private, not-for-profit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986, and it may be a corporation, a subsidiary of a larger corporation, or a department of a corporation. In this discussion, we will refer to all entities that meet this standard as not-for-profit entities.

Sections 1894(h) and 1934(h) of the Act direct the Secretary to waive the requirement that a PO be a not-for-profit entity in order to demonstrate the operation of a PO by private, for-profit entities. Section 4804(b) of the BBA of 1997 requires the Secretary to provide a report to Congress on the impact of the demonstration on quality and cost of services, including certain findings regarding the frailty level, access to care, and the quality of care of PACE participants enrolled with for-profit POs, as compared to not-for-profit POs. Section 4804(b)(2) of the BBA of 1997 requires the report to Congress to include findings on whether any of the following four statements is true with respect to the for-profit PACE demonstration:

1. The number of covered lives enrolled with entities operating under demonstration project waivers under sections 1894(h) and 1934(h) of the Act is fewer than 800 (or such lesser number as the Secretary may find statistically sufficient to make determinations respecting findings described in the succeeding subparagraphs).
2. The population enrolled with such entities is less frail than the population enrolled with other POs.
3. Access to or quality of care for individuals enrolled with such entities is lower than such access or quality for individuals enrolled with other POs.
4. The application of such section has resulted in an increase in expenditures under the Medicare or Medicaid programs above the expenditures that would have been made if such section did not apply. (We refer to these statements collectively as the BBA statements.)

Under sections 1894(a)(3)(B)(ii) and 1934(a)(3)(B)(ii) of the Act, after the date the report is submitted to Congress, the requirement that a PO be a not-for-profit entity will not apply unless the Secretary determines that any of the BBA statements are true.

In 2008, Mathematica Policy Research completed a study of the permanent not-for-profit POs.[4] An interim report to Congress based on this study was submitted in January 2009. At the time of the 2008 Mathematica study, no for-profit entities had enrolled in the PACE demonstration. Therefore, neither report assessed a for-profit PACE population nor did the interim report address the BBA statements.

From 2012 to 2013, Mathematica, under contract with CMS, conducted a study to address quality of and access to care for participants of for-profit POs, specifically focusing on the third BBA statement. The 2013 Mathematica report also included material that provided insight into the first and second BBA statements.[5] Based on the two Mathematica studies, HHS prepared and submitted the report to the Congress on May 19, 2015. A copy of the report to Congress can be found at *https://innovation.cms.gov/Files/reports/RTC_For-Profit_PACE_Report_to_Congress_051915_Clean.pdf.*

As detailed in the report, HHS could not conclude that any of the four BBA statements were true. First, the number of covered lives enrolled with for-profit POs was not fewer than 800, and the sample size for the survey examining BBA statements two and three was large enough to make statistically significant determinations of differences. The report stated that HHS could not conclude that for-profit PACE participants are less frail than not-for-profit PACE participants. It also stated that HHS could not conclude that for-profit PACE participants experienced systematic adverse differences in quality of care or access to care as compared to not-for-profit PACE participants. Finally, expenditures were equal between for-profit and not-for-profit POs after controlling for beneficiary risk score, organization frailty score, and county rates, so there would not have been an increase in expenditures if participants in the for-profit POs had been enrolled with a not-for-profit PO.

Based on the findings in the report to Congress, we determined that under sections 1894(a)(3)(B) and 1934(a)(3)(B) of the Act, the requirement that a PO be a not-for profit entity would no longer apply after May 19, 2015 (the submission date of the report to Congress). Because the statutory not-for-profit restriction no longer applies, we are proposing to remove the corresponding restriction in § 460.60(a) in its entirety. We propose to redesignate § 460.60(b), (c), and (d) as § 460.60(a), (b), and (c).

In addition, we propose to revise current paragraph (d)(3) (redesignated paragraph (c)(3)) regarding changes in the organizational structure of a PO and add a new paragraph (d) to address PO changes of ownership. Section 460.60(d)(3) currently provides that a PO planning a change in organizational structure must notify CMS and the SAA, in writing, at least 14 days before the change takes effect. We have stated in guidance that a change in organizational structure is one that may affect the philosophy, mission, and operations of the PO and affect care delivery to participants, and would include any change in ownership (see PACE Manual, Ch. 2, section 20.3).

In the 1999 IFC (64 FR 66241) we required POs to notify both CMS and the SAA at least 60 days prior to any change in their organizational structure and obtain advance approval for any change that involved a change of ownership. In the 2006 final rule (71 FR 71264), we discussed the comments we received on this provision and explained it was not our intent to require POs to notify CMS and the SAA in writing every time there was a change in personnel or a change in the line of reporting of direct participant care staff. Based on comments that the 60-day timeframe was unnecessary, we elected to change the requirement to the 14-day requirement that is currently in place. We also deleted the requirement that changes in organizational structure must be approved in advance by CMS and the SAA, agreeing with commenters that POs have the ability to make such business decisions based on their individual circumstances. As CMS and the SAA are responsible for the health care provided to participants, we retained the 14-day notification requirement in § 460.60(d)(3) to allow CMS and the SAA sufficient time to monitor whether the change is having a substantial impact on the participants or their care. However, we reiterated that in the event of a change of ownership, we would apply the general provisions described in the Medicare Advantage regulations at § 422.550.

---

[4] A copy of the 2008 Mathematica study results can be found here: *http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Reports/Downloads/Beauchamp_2008.pdf.*

[5] A copy of the 2013 Mathematica study results can be found here: *https://innovation.cms.gov/Files/reports/pace-access-qualityreport.pdf.*

Based on our experiences with PO changes of ownership since we published the 2006 final rule, we no longer believe 14 days gives us enough time to review and process a change of ownership. A change of ownership is significantly different from other organizational changes in that it results in the acquiring entity assuming the responsibilities under the PACE program agreement. We need additional time to determine whether the acquiring entity meets statutory and regulatory requirements for entering into a PACE program agreement. Our ultimate responsibility is to the PACE participants, and we need to ensure that an entity is able to assume and fulfill the responsibilities of a PO under the PACE program agreement.

Moreover, the process to effectuate a change of ownership transaction in our systems requires more time than the 14-day timeframe in the current regulation. For example, a minimum of 6 weeks is needed to effectuate changes in our payment systems for the new owner. A 60-day advance notification requirement is more consistent with that timing. We also want our regulations to be clear that the requirements in 42 CFR part 422, subpart L (Effect of Change of Ownership or Leasing of Facilities During Term of Contract), which apply to MAOs under the Medicare Advantage program, apply to POs in a change of ownership scenario. Therefore, we propose to amend newly redesignated paragraph (c)(3) to indicate that the 14-day timeframe does not apply to changes of ownership, and to add new paragraph (d), which would specify that a PO planning a change of ownership must comply with all requirements in 42 CFR part 422, subpart L, and must notify CMS and the SAA, in writing, at least 60 days before the anticipated effective date of the change. We believe this will provide the time we need to determine if the entity acquiring the PO meets all PACE requirements and will be able to continue providing quality care to the participants of the PO, and to reflect the change in our systems. We also believe the amended language would provide greater clarity to POs as to the requirements that will apply in change of ownership scenarios. We believe the Medicare Advantage requirements for changes of ownership in 42 CFR part 422, subpart L, are appropriate for the PACE program. We will only enter into a PACE program agreement with an entity that is determined to meet PACE program requirements.

For the purposes of this provision, any change of ownership as defined in § 422.550(a), such as an asset transfer, a merger, or change in partnership, would require a novation agreement, where the contract is substituted for the former contract. POs will need to follow all change of ownership requirements in 42 CFR part 422, subpart L, and must submit all of the necessary documents to CMS for review within the allotted timeframes. Upon CMS's determination that the conditions for CMS approval of a novation agreement are met, a new PACE program agreement will be executed with the acquiring entity.

2. Governing Body (§ 460.62)

Section 460.62 focuses on the ability of the PO's governing body to provide effective administration in an outcome-oriented environment. As we have previously explained in the 1999 IFC (64 FR 66241) and the 2006 final rule (71 FR 71264), the governing body guides operations and promotes and protects participant health and safety, and it is legally and fiscally responsible for the administration of the PO. Additionally, the governing body must create and foster an environment that provides quality care that is consistent with participant needs and the program mission. To that end, we are proposing to revise the language in § 460.62(a)(7) and to add new paragraph (a)(8). Currently, § 460.62(a)(7) references a "quality assessment and performance improvement" program. In addition to replacing that term with "quality improvement," as discussed previously in section II.A. of this proposed rule, we are also proposing to add a reference to the quality improvement program requirements in § 460.130, to make it clear that the governing body is ultimately responsible for ensuring the PO meets those requirements.

In addition, as discussed later in this section, we are proposing in a new § 460.63 to require that all POs adopt and implement effective compliance oversight. Because the governing body is both legally and fiscally responsible for administration of the PO, and is responsible for ensuring that the organization provides quality care (see § 460.62(a)), we believe adoption and implementation of compliance oversight requirements is the responsibility of the governing body. Having legal responsibility over the governance of the organization requires ensuring that the organization complies with federal and state regulations, adheres to contract requirements, and minimizes waste and abuse. To that end, we are proposing to add a new § 460.62(a)(8) that specifies the governing body of the PO must have full legal authority and responsibility for adopting and implementing effective compliance oversight as described in § 460.63.

3. Proposed Compliance Oversight Requirements

Compliance programs, as found in the Medicare Advantage (MA) and Medicare Part D programs, have long been recognized as key to protecting against fraud, waste, and abuse. The importance of these programs has been highlighted by several of our oversight bodies. As is authorized by sections 1934(f)(3) and 1894(f)(3) of the Act, we are now proposing to adopt compliance oversight requirements in the PACE regulations. Specifically, we would require each PO to have a compliance oversight program that is responsible for monitoring and auditing their organization for compliance with our regulations. Additionally, we would require POs to have measures that prevent, detect and correct non-compliance with CMS's program requirements as well as measures that prevent, detect, and correct fraud, waste, and abuse. This is a proposed new section at § 460.63, entitled "Compliance Oversight Requirements."

In determining what compliance oversight CMS should require of all POs, we considered as potential models the compliance program requirements for Medicare Part C organizations at § 422.503(b)(4)(vi) and the compliance program requirements for Part D sponsors at § 423.504(b)(4)(vi). POs offering qualified prescription drug coverage under Part D are already required to have a compliance program as a part of their Part D benefit, however, specific requirements of the Part D compliance program were waived for all POs. The Part D application took into account PACE as a direct care provider as well as a payer, and it weighed the importance of maintaining compliance with CMS regulations with the need for flexibility as a direct care provider. All Part D compliance program elements were waived except the two elements proposed in this regulation.

In § 460.63, we propose to establish that the two elements of a Part D compliance program required of POs participating in Part D will become compliance oversight requirements for the PO as a whole. Specifically, we propose to require each PO to adopt and implement effective compliance oversight, which includes measures that prevent, detect and correct non-compliance with CMS's program requirements as well as measures that prevent, detect and correct fraud, waste and abuse. We propose that the compliance oversight program in PACE include, at a minimum: (1) The establishment and implementation of an effective system for routine monitoring and identification of compliance risks, which should include internal monitoring and audits and, as appropriate, external audits, to evaluate the PO, including contractors, compliance with CMS requirements and the overall effectiveness of the compliance oversight program; and (2) the establishment and implementation of procedures and a system for promptly responding to compliance issues as they are raised, investigating potential compliance problems as identified in the course of self-evaluations and audits, correcting such problems promptly and thoroughly to reduce the potential for recurrence, and ensuring ongoing compliance with our requirements. Included in this proposal would be the requirements that a PO: (1) Conduct a timely and reasonable inquiry if evidence of misconduct relating to payment or delivery of items or services is discovered, (2) conduct appropriate corrective action in response to potential violations (for example, repayment of overpayments or disciplinary actions against responsible employees), and (3) have procedures to voluntarily self-report potential fraud or misconduct to CMS and the SAA. The PO should already have these elements implemented for their Part D benefit, but they would need to expand these efforts to cover all of the services provided by the PO.

POs are not currently required to conduct internal organization wide monitoring or auditing efforts. Through our experiences with MA and Part D organizations, we believe that conducting monitoring and auditing is key to identifying and correcting issues of non-compliance with CMS requirements. We believe that by adding these two compliance oversight provisions we are balancing the duty of a PO to ensure compliance with CMS requirements with the need for flexibility as a provider of service. POs will also benefit from improving their ability to identify and correct compliance risks within their own organization.

Additionally, our proposal requires the PO to implement appropriate corrective action in response to any identified issues of non-compliance that POs may discover. These elements are important safeguards to protect against fraud, waste, and abuse, and to ensure POs are compliant with CMS requirements. We believe our proposal for POs to adopt these compliance oversight requirements is a reasonable approach and will ensure POs are identifying and correcting potential non-compliance at the earliest possible stage.

If finalized, we intend to verify compliance with this new requirement through monitoring or auditing of the PO.

4. Personnel Qualifications (§ 460.64)

Section 460.64 sets forth the personnel qualifications for staff with direct participant contact. In the 2006 final rule (71 FR 71267), we added a requirement at § 460.64(a)(3) that all personnel that have direct participant contact must have a minimum of 1 year of experience with a frail or elderly population. Our rationale was that the PACE population is comprised of frail or elderly individuals who must be cared for by staff with the specific training and experience necessary to understand the complexities and differences in geriatric patients.

However, we are concerned that many POs, especially those in rural settings, may have candidates for PO staff positions who meet all other qualifications for a specific position under § 460.64(a) but do not have 1 year of experience working with the frail or elderly population. We have approved several waivers of this requirement. For example, this situation often arises for positions such as van driver or transportation coordinator. We have received anecdotal reports that some POs encounter van drivers who have many years of relevant experience as school bus drivers but are unable to hire these drivers based on the requirement that staff with direct participant contact have 1 year of experience working with the frail or elderly population. We also have approved this type of waiver request for registered nurses (RNs), social workers, and other direct care providers.

We believe that POs should be able to hire individuals who meet all other qualification requirements under § 460.64(a) except for the 1 year of experience requirement under paragraph (a)(3), and provide training to these individuals upon hiring. This required training may be provided either through a training entity or directly by the PO. This training must be based on industry standards in order to provide these individuals with the skills necessary to work with the frail or elderly population in PACE. For example, through training, an individual would be taught about the complexities and differences in geriatric patients, and that he or she needs to be gentler, more patient and more observant than with a healthy, younger population. Therefore, we are proposing to amend § 460.64(a)(3) to state that a member of the PO's staff (employee or contractor) who has direct participant contact must have 1 year of experience working with a frail or elderly population or, if the individual has less than 1 year of experience but meets all other requirements under paragraph (a) of § 460.64, must receive appropriate training from the PACE organization on working with a frail or elderly population upon hiring. This proposal would afford POs the flexibility to hire an otherwise qualified individual with less than 1 year of experience working with the frail or elderly population and subsequently provide the requisite training.

Current language in § 460.64(a)(4) requires staff with direct participant contact to meet a standardized set of competencies for a specific position established by the PO and approved by CMS before working independently. We continue to believe POs must establish a competency evaluation program for direct participant care staff as required by § 460.71(a)(2) and discussed in the 2006 final rule (71 FR 71267) to ensure that staff have the skills, knowledge and abilities needed to deliver safe care to participants. However, we do not believe it is necessary for CMS to approve those competency evaluation programs prior to their use. CMS expects the PO to use current industry standards. Therefore, we propose to revise to this paragraph to remove the reference to CMS approval. We also are proposing to make technical, non-substantive changes to the language in paragraph (a) by changing the order of the current language in order to make the provision clearer and more concise.

5. Training (§ 460.66)

Section 460.66 requires the PO to provide training for staff members and to develop a specific training program for personal care attendants (PCAs). Paragraph (b) requires the PO to develop a training program for each PCA in order to establish the individual's competency in furnishing personal care services and specialized skills associated with the specific care needs of individual participants. Paragraph (c) states that PCAs must exhibit competency before performing personal care services independently. We are proposing to redesignate § 460.66(b) and (c) to § 460.71, "Oversight of Direct Participant Care," as new paragraphs (c) and (d), respectively, because § 460.71 already includes requirements regarding training of staff and competency evaluations for employees and contracted staff furnishing care directly to participants. We believe including all of the related requirements in the same section would reduce confusion over applicable requirements. We are not proposing any changes to the language in § 460.66(a) but are proposing to remove the paragraph designation of paragraph (a).

6. Program Integrity (§ 460.68)

Section 460.68 was established to guard against potential conflicts of interest and certain other risks individuals and organizations could present to the integrity of the PACE program. Section 460.68(a) addresses risks presented by a PO employing or contracting with persons with criminal convictions. Section 460.68(a)(1) addresses individuals and organizations who have been excluded from participation in the Medicare or Medicaid programs. Section 460.68(a)(2) addresses individuals and organizations who have been convicted of offenses related to their involvement in Medicaid, Medicare, other health insurance or health care programs or social service programs under title XX of the Act. Section 460.68(a)(3) currently states that a PO must not employ individuals or contract with organizations or individuals in any capacity where an individual's contact with participants would pose a potential risk because the individual has been convicted of physical, sexual, drug, or alcohol use.

We believe that the current language in § 460.68(a) may not be tailored to effectively mitigate the risks that employing or contracting with certain individuals and organizations with prior convictions may pose to the PACE program, while still allowing POs to hire and contract with individuals who have had issues in their past that do not pose a risk to the PACE program. Accordingly, we are proposing to amend § 460.68(a) by adding clarifying language to current paragraph (a)(3) and by adding two new paragraphs (a)(4) and (5).

The current language in § 460.68(a)(3) may have, in some cases, been overbroad so as to impair the PO's ability to hire or contract with appropriate staff. For example, under the current regulation, a PO is precluded from employing an individual with a conviction related to underage drinking, who has not had a conviction in adulthood, who is an otherwise appropriately qualified individual to work in a PO, and who would pose no foreseeable threat to participants. In other instances, however, it is possible that an individual's past criminal conviction or convictions related to physical, sexual, drug, or alcohol abuse could provide POs with reason to believe that the individual may pose a threat of harm to participants. For example, there is a foreseeable risk of harm to participants if a PO employs a transportation driver who has a history of multiple DUI convictions. We believe that it is important for POs to consider an individual's past criminal convictions and the potential risk to participants; however, we do not want to limit POs' ability to hire or contract with qualified individuals. This reflects the direction we have taken for long-term care facilities (see, for example, § 483.13(c)(1)(ii)), where specific restrictions are focused on individuals that are found guilty of abusing, neglecting or mistreating nursing home residents.

As such we are proposing to amend the language at § 460.68(a)(3) to enable POs to make a determination as to whether an individual's contact with participants would pose a potential risk because the individual has been convicted of one or more criminal offenses related to physical, sexual, drug, or alcohol abuse or use. We note that POs are still bound by state laws governing the hiring of individuals that provide care and services to the frail elderly in state programs. We also note that the current language in § 460.68(a)(3), which refers to "drug, or alcohol abuse" does not parallel the terminology used in criminal statutes, which often do not use the term "abuse" to describe the misconduct at issue, and also does not take into account criminal convictions that could be related to drug, or alcohol use, such as DUIs, or drunken and disorderly conduct. We are therefore proposing to amend the language to include "drug, or alcohol abuse or use."

Although we do not want to foreclose POs from employing or contracting with qualified individuals or organizations that would pose no harm to participants despite past convictions, we are proposing to add language in paragraphs (a)(4) and (5), to impose additional limitations on POs employing or contracting with individuals or organizations that may pose a risk to participants. In new paragraph (a)(4), we are proposing to add a restriction stating that a PO must not employ individuals or contract with organizations or individuals who have been found guilty of abusing, neglecting, or mistreating individuals by a court of law or who have had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents, or misappropriation of their property. This language parallels regulatory restrictions applicable to Long Term Care facilities in § 483.13(c)(1)(ii). We believe these safeguards intended to protect residents in long term care facilities are equally appropriate protections for participants in the PACE program. In paragraph (a)(5), we are proposing to add a restriction stating that a PO must not employ individuals or contract with organizations or individuals who have been convicted of any of the crimes listed in section 1128(a) of the Act. These offenses, which are bases for mandatory exclusion from federal health care programs, are: (1) Conviction of program-related crimes; (2) conviction relating to patient abuse; (3) felony conviction relating to health care fraud; or (4) felony conviction relating to controlled substance. Because we are proposing to add two paragraphs to the current three paragraphs in paragraph (a), we are proposing to remove the word "or" at the end of paragraph (a)(2). We also invite public comment on whether we should extend this provision to restrict hiring with respect to those with certain criminal justice histories to also include those with current restraining orders against them.

7. Contracted Services (§ 460.70)

Sections 1894(b)(1)(A) and 1934(b)(1)(A) of the Act state that, under a PACE program agreement, a PO must furnish items and services to PACE participants directly or under contract with other entities. Accordingly, we require in § 460.70 that all administrative or care-related services, except for emergency services as described in § 460.100, that are not furnished directly by a PO must be obtained through contracts that meet the requirements specified in regulations. We are seeking input on whether contracted services authorized by the PO or services operated directly by the PO should comply with the Home and Community-Based Settings (HCBS) regulation at § 441.301(c)(4) when non-institutional settings are used to house and/or provide services to PACE participants, provided they do not conflict with requirements under this section. The HCBS settings requirements apply broadly to many different Medicaid authorities, including state plan services and waivers, such as sections 1915(c), 1915(i), and 1915(k) of the Act. Because POs already support the majority of participants in non-institutional settings, we are seeking comments on whether or not CMS should apply the requirements to POs. Although we are not proposing any changes in this proposed rule requiring compliance with § 441.301(c)(4) when non-institutional settings used to house and/or provide services to PACE participants, we are requesting comments on possible proposals to do so in future rulemaking. Changes we are considering and on which we are soliciting comments include:

- Adding a new paragraph § 460.70(b)(1)(iv) stating, a contractor must comply with the Home and Community-Based Settings (HCBS) regulation at § 441.301(c)(4) when non-institutional settings are used to house, provide services to, or house and provide services to PACE participants, provided they do not conflict with requirements under this section.
- Adding a new paragraph § 460.98(b)(4) stating, the PO must comply with the Home and Community-Based Settings (HCBS) regulation at § 441.301(c)(4) when non-institutional settings are used to house, provide services to, or house and provide services to PACE participants, provided they do not conflict with requirements under this section.

In this proposed rule, we are proposing several revisions concerning contracts with entities that furnish administrative or care-related services. Section 460.70(d)(5) specifies the required terms for contracts with entities that furnish administrative or care-related services. Sections 460.70(d)(5)(vi) through (ix) address additional contract requirements where the PO chooses to contract with individuals as IDT members or key administrative staff. Although the current provisions do not explicitly reference those individuals, this was our intent when we adopted the requirements in the 2002 IFC (see 67 FR 61498, 61505) and when we addressed these requirements in the 2006 final rule (see 71 FR 71270, 71335). This is also how we have interpreted the regulation in practice, however, we understand it has caused confusion for POs. To make the regulation clearer and reduce confusion, we are proposing to add a new paragraph (d)(6) under which we are proposing to redesignate § 460.70(d)(5)(vi) through (ix) as § 460.70(d)(6)(i) through (iv) and state that these contract requirements apply to individuals providing contracted services to the IDT or performing the duties of the program director or medical director. We are also proposing to make a technical change to the language in former § 460.70(d)(5)(vii), proposed § 460.70(d)(6)(ii), to change "meeting" to "meetings."

We are proposing to make a technical change to § 460.70(e)(2) to change "PACE Center" to "PACE center" consistent with the definition in § 460.6, and other references throughout the regulation. We are also proposing to revise § 460.70(e)(2) to correct the reference contained in that section by changing § 460.98(d) to be § 460.98(c).

8. Oversight of Direct Participant Care (§ 460.71)

Section 460.71 identifies PO oversight requirements for employees and contracted staff with direct patient care responsibilities. Paragraph (a) requires the PO to ensure that all employees and contracted staff furnishing care directly to participants demonstrate the skills necessary for performance of their position, and further requires, under paragraph (a)(1), that the PO provide an orientation to all employees and contracted staff. Paragraph (b) requires the PO to develop a program to ensure that all staff furnishing direct participant care services meet certain requirements, including, under paragraph (b)(4) that they are free of communicable diseases and are up to date with immunizations before performing direct patient care.

We are proposing to make some technical, non-substantive changes to paragraph (a)(1) that would make the provision more concise. We are also proposing to amend paragraph (b)(4). Our intent when we amended § 460.71 in the 2006 final rule was to reflect our current policy described in § 460.64(a)(5), which states that PACE staff (employees or contractors) who have direct participant contact must be medically cleared for communicable diseases and have all immunizations up-to-date before engaging in direct participant contact (see 71 FR 71273). We note that § 460.71(b)(4) was not amended in a consistent manner, which we understand caused confusion among POs about whether to attach the same meaning to "medically cleared for communicable diseases" and "free of communicable diseases." Therefore, we are proposing to amend § 460.71(b)(4) by referencing the language previously added to § 460.64(a)(5) so that both sections are consistent and contain the same language.

As noted previously in our discussion of proposed changes to § 460.66, we propose to move paragraphs (b) and (c) of § 460.66 related to direct participant care to § 460.71(c) and (d), respectively.

9. Physical Environment (§ 460.72)

Section 460.72 addresses requirements for the physical environment of the PACE center, including those pertaining to space and equipment, fire safety, and emergency and disaster preparedness. CMS previously issued a proposed rule under the Medicare and Medicaid programs that, if finalized, would affect the PACE requirements at § 460.72. Specifically, in the December 27, 2013 **Federal Register** (78 FR 79802), CMS published a proposed rule titled "Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers; Proposed Rule." The rule proposed to establish national emergency preparedness requirements for 17 types of Medicare- and Medicaid-participating providers and suppliers, including POs, to ensure that they adequately plan for both natural and man-made disasters, and coordinate with federal, state, tribal, regional, and local emergency preparedness systems. Regarding PACE, the proposed rule generally would remove the current PO emergency preparedness requirements at § 460.72(c)(1) through (5) and incorporate them into a new proposed § 460.84, "Emergency preparedness." For a complete discussion of the PACE emergency preparedness proposal, see 78 FR 79107 through 79108, 79185.

As with all rulemaking, the public was afforded an opportunity to comment on these proposed revisions during the notice and comment period. CMS intends to address the comments and any changes to the PACE program through that rulemaking and not in this proposed rule.

10. Marketing (§ 460.82)

Section 460.82 addresses requirements governing the marketing activities of POs. Section 460.82 provides special language requirements, and paragraph (c)(1) states that a PO must furnish printed marketing materials to prospective and current participants in English and in any other principal languages of the community. We are proposing to further clarify this requirement by defining what we mean by "principal languages of the community." As we stated in the 2006 final rule (71 FR 71279), we believe the determination of a principal language of the community is a state determination. However, we recognize that not all states have an established standard for when a language is considered to be a principal language of the community (in other words, a language threshold). Where a state has not established such a standard, we are proposing the following standard would be applied—a principal language of the community would be any language spoken in the home by at least 5 percent of the individuals in the PO's service area. We refer to any language spoken "in the home" because U.S. Census data identifies the principal language as the primary language spoken in the home. We established a similar 5 percent language threshold for marketing materials in the Medicare Advantage program (see § 422.2264(e)), and we believe this threshold is also appropriate for PACE. Moreover, we strive to create harmony across program requirements when feasible. This reduces complexity for those organizations that operate multiple CMS programs. Currently, in the Medicare Advantage program, we determine which MA organizations must provide translated marketing materials by using the U.S. Census Bureau's American Community Survey (ACS) data, and we then communicate that information to plans via HPMS. If we finalize this proposal, we would use the same approach in PACE. We note that our proposal does not aim to replace any state-based language thresholds; rather the goal is to provide a standard in instances where a state standard does not exist. Additionally, this proposal would not preclude POs from producing materials in alternative languages when those languages are spoken by less than 5 percent of the individuals in the PO's service area, rather it aims to set a more clear standard for when furnishing such materials is a requirement.

Paragraph (e) pertains to prohibited marketing practices and places certain restrictions on PO employees and agents. Paragraph (e)(3) states that gifts or payments to induce enrollment are prohibited. As we stated in the 2006 final rule, this provision does not prevent a PO from offering gifts of a nominal value (see 71 FR 71279). For example, as we explained in the 2006 final rule, offering gifts to potential enrollees that attend a marketing presentation is permitted as long as these gifts are of a nominal amount and are provided whether or not the individual enrolls in the PACE program. The gift cannot be a cash gift or be readily converted into cash regardless of the amount. To ensure that our regulations reflect this distinction, we are proposing to amend paragraph (e)(3) to specify that gifts or payments to induce enrollment are prohibited, unless the gifts are of nominal value as defined in CMS guidance, are offered to all potential enrollees without regard to whether they enroll in the PACE program, and are not in the form of cash or other monetary rebates. CMS currently defines "nominal value" in section 30.10 of the PACE Marketing Guidelines (*https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/pace111c03.pdf*) to mean an item worth $15 or less, based on the retail value of the item, which is consistent with the values in the marketing guidelines under the Medicare Advantage and Medicare Part D programs. We believe this revision to paragraph (e)(3) would preserve our goal of ensuring that current and potential PACE participants and their families or guardians elect PACE based on the merits of the program versus the enticement of a gift, while clarifying that POs have the ability to offer prospective participants a small gift such as a pen with the organization's name and contact information without the concern of violating the PACE marketing regulations. Similar flexibility has been permitted under both the Medicare Advantage and Part D programs for several years with no notable adverse impact to participants. As such, the PACE program will continue to look to these two programs to define the monetary value that constitutes a nominal gift. In addition, and consistent with the Medicare Advantage and Part D programs, the PACE regulatory definition of a nominal gift will exclude any gifts in the form of cash or monetary rebates.

Section 460.82(e)(4) prohibits contracting outreach efforts to individuals or organizations whose sole responsibility involves direct contact with the elderly to solicit enrollment. Due to the particular nature of the PACE program and the PACE population, we believe it is in the best interest of the program to only permit POs to market their programs through their own employees. Therefore, we are proposing amendments to this section to specifically prohibit POs from using non-employed agents/brokers, including contracted entities, to market PACE programs.

The decision to enroll in a PACE program is significantly different from the decision to enroll into other Medicare or Medicaid managed care programs because PACE participants must agree to receive all medical care (as well as other services) from the PO into which they enroll. This may mean PACE participants must give up longstanding relationships with health care providers as well as become liable for the costs of any unauthorized services. This is an important distinction that non-employed agents and brokers may overlook when they market PACE programs to potential participants. Agents and brokers that do not work for POs often sell other products, such as Medicare Advantage and Medicare Prescription Drug Plan (PDP) products. These products are significantly different from PACE in many respects, including the services that are covered, the ways in which participants receive the services, and the enrollment requirements for participants. We are concerned that these substantial differences, combined with the typical low enrollment numbers associated with the PACE program, make it difficult for agents and brokers that are not employed by POs to fully understand and explain the PACE program to potential participants. It is important to emphasize that our concern is less about false marketing (which connotes a malicious action) and more about enrollment numbers not becoming the primary motivation when marketing PACE. An independent third party would likely not have the opportunity to develop the necessary expertise to act as agents employed by a PO. We believe employees of the PO are the best equipped to provide potential participants and their caregivers with accurate information about the PO, the services it provides and the ramifications of receiving services not approved by the PO's IDT. This is especially important given the vulnerable nature of the PACE population, which is elderly and frail and often has more complex health care needs than Medicare or Medicaid managed care populations, for which the use of non-employed agents and brokers for marketing may be more appropriate.

We believe that only permitting POs to use employees for marketing activities will help ensure potential

PACE participants fully understand the program, the rules, how to access services, and the ramifications of not accessing services through the PO. Accordingly, we are proposing to amend § 460.82(e) to remove the term "agents" and simplify the language. The revised provision would state that a PACE organization must not use the following marketing practices, which are prohibited. In conjunction with that revision, we are also proposing to amend paragraph (e)(4) to prohibit marketing by any individuals other than the employees of the PACE organization. We realize that some POs have existing arrangements with independent agents and brokers. We also recognize that, as with other functions, POs may delegate such responsibilities to an outside entity. Therefore, we are seeking comment as to whether CMS's proposed prohibition on the use of independent agents and brokers is appropriate. If commenters believe that this prohibition is not appropriate, we ask for specific reasons for allowing their use, descriptions of how POs contemplate using agents and brokers, and the protections POs have in place to ensure accurate information is provided to potential PACE participants.

Section 460.82(e)(5) prohibits unsolicited door-to-door marketing. We are proposing to add language to § 460.82(e)(5) specifying that any other unsolicited means of direct contact, including calling or emailing a potential or current participant without the individual initiating contact, is a prohibited marketing practice under PACE. Unsolicited contact, for example, through telephone (also known as "cold calling") or email, is similar to, and generally as prevalent if not more prevalent, than door-to-door marketing, which is already expressly prohibited under § 460.82(e)(5). The purpose of this addition is to clarify that unsolicited means of direct contact through telephone and email are not allowed under PACE. Although we declined in the 2006 final rule to expand this prohibition beyond door-to-door solicitation, we stated we would continue to monitor marketing practices by POs and would propose additional safeguards as appropriate (see 71 FR 71279). Based on the vulnerability of the population served by the PACE program and the increase in health care fraud that we have seen since 2006, we believe a prohibition on other unsolicited means of direct contact is appropriate for PACE. Moreover, such a prohibition is consistent with our marketing requirements for MA organizations (see § 422.2268(d)) and PDP sponsors (see § 423.2268(d)).

We are also proposing to remove § 460.82(f), which requires that POs establish, implement, and maintain a documented marketing plan with measurable enrollment objectives and a system for tracking its effectiveness. Based on the insight we have gained through years of oversight responsibility for the PACE program, we believe the requirement for a marketing plan is redundant. We believe that the pertinent information captured in the plan is attainable through other account management activities. For example, POs convey marketing strategy in regularly scheduled meetings with their CMS Account Managers. The CMS Account Manager is also made aware of marketing materials and messages, as well as the intended audience for such materials and messages, through the marketing submission and review process. In addition, CMS has a separate method for tracking enrollment data.

G. Subpart F—PACE Services

1. Service Delivery (§ 460.98)

Section 460.98 addresses service delivery under PACE. We propose to make a technical change to the heading of § 460.98(d) to replace "PACE Center" with "PACE center" for consistency with other references in § 460.98 and throughout part 460. Likewise, in paragraph (d)(3) we would replace "Pace center" with "PACE center" for the same reason.

In addition, we are requesting public comment on potential changes to our PACE center requirements, which originated from the PACE Protocol. As defined in § 460.6, a PACE center is a facility which includes a primary care clinic, areas for therapeutic recreation, restorative therapies, socialization, personal care, and dining, and which serves as the focal point for coordination and provision of most PACE services. Under § 460.98(b)(2), PACE services must be furnished in at least the PACE center, the home and inpatient facilities, and under § 460.98(b)(2), certain minimum services must be furnished at each PACE center. Section 460.98(d) requires a PO to operate at least one PACE center either in, or contiguous to, its defined service area with sufficient capacity to allow routine attendance by participants. A PO must ensure accessible and adequate services to meet the needs of its participants and, if necessary, must increase the number of PACE centers, staff, or other PACE services. If a PO operates more than one center, each PACE center must offer the full range of services and have sufficient staff to meet the needs of participants.

As explained in the 2006 final rule (71 FR 71283), we believe the success of the PACE delivery model has been predicated on the combination of the IDT assessment, care planning, and the PACE center. The PACE center requirement established in the original PACE Protocol provides a point of service where the primary care clinic is located, where services are provided, and socialization occurs with staff that is consistent and familiar. The IDT not only works from the PACE center, it also provides the majority of services to participants at the PACE center, where most participants come on a regular basis to receive the majority of their care. Attendance at the center has been considered an important aspect of the PACE model, which helps to differentiate it from home health care or institutional care. More recently CMS has allowed participants to receive services at alternative care settings. However, those services are meant to supplement, not replace, the services that the PACE center must furnish.

Over the years, we have received a number of requests to provide greater flexibility with respect to the PACE center operation and service requirements. We have heard concerns that the development costs and the length of time required to establish a PACE center can be significant and as well as inhibit expansion of existing programs. To better understand the issues facing POs, we invite public comment on ways to revise the current regulatory requirements to allow greater flexibility with regard to the settings in which IDT members provide PACE services, while still ensuring that PACE participants can receive the full range of services and benefits that has made PACE such a successful model for this population. We will use public comments to inform future PACE rulemaking concerning how to allow greater flexibility with regard to the settings in which IDT members provide PACE services.

2. Emergency Care (§ 460.100)

Section 460.100 addresses emergency care under PACE. We are proposing to make a technical revision to § 460.100(e)(3)(i) by replacing references to "POs" and "PO" with references to "PACE organizations" and "PACE organization," respectively, to make the language consistent throughout § 460.100 and with other references in part 460.

3. Interdisciplinary Team (§ 460.102)

Section 460.102 sets forth the requirements for an IDT, which are based on provisions in Part IV, section B of the PACE Protocol (see 64 FR 66248). As we have stated previously in preambles to rules and subregulatory guidance (see *http://cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/pace111c08.pdf*), we believe a well-functioning IDT is critical to the success of the PACE program because the team is instrumental in controlling the delivery, quality, and continuity of care. Further, members of the IDT should be knowledgeable about the overall needs of the participants, not just the needs that relate to their individual disciplines (64 FR 66248; 71 FR 71285). Section 460.102(a)(1) requires that the PO establish an IDT at each PACE center to comprehensively assess and meet the individual needs of each participant. Section 460.102(b) specifies the composition of the team and provides that it be comprised of at least the 11 members listed in the section.

Under sections 1894(f)(2)(B)(iii) and 1934(f)(2)(B)(iii) of the Act, the IDT approach to care management and service delivery is a requirement that cannot be waived. However, we understand there may be circumstances when it would be difficult for a PO to have a separate individual fill each of the 11 IDT roles, which may be an obstacle for the expansion of the PACE program, especially in rural areas. To provide greater flexibility for POs, we are proposing that a PO be permitted to have one individual fulfill a maximum of two separate roles on an IDT when the individual meets applicable state licensure requirements and is qualified to fill each role and able to provide appropriate care to meet the participant's needs. For example, a registered nurse cannot fill the role of a Master's level social worker unless the registered nurse also has a Master's degree in social work. Pursuant to §§ 460.190 and 460.192, CMS and the SAA monitor POs during the trial period and perform ongoing monitoring after the trial period to ensure that POs are in compliance with all PACE requirements. These monitoring activities will serve as a safeguard to help ensure there is no negative impact to the quality of care being provided. During these reviews, CMS and the SAA can confirm that when an IDT member is serving in two IDT roles, participants' needs are still being met. As such, we are proposing to revise paragraph (a)(1) to state that the IDT must be composed of members that fill the roles described in paragraph (b). We also are proposing to revise paragraph (b) to state the IDT must be composed of members qualified to fill at a minimum the following roles, in accordance with CMS guidelines. We will publish the IDT guidelines in HPMS following publication of the final rule. Paragraph (b) would also state that one individual may fill two separate roles on the IDT where the individual meets applicable state licensure requirements and is qualified to fill the two roles and able to provide appropriate care to meet the needs of participants.

Section 460.102(b)(1) currently provides that the IDT must include a primary care physician, and § 460.102(c) requires that primary medical care be furnished by a PACE primary care physician who is responsible for managing a participant's medical situations and overseeing a participant's use of medical specialists and inpatient care. We are aware that changes in the practice of medicine and state licensing laws have expanded the practice of non-physician practitioners (for example, nurse practitioners), such that these practitioners in many cases are able to fulfill the role served by the primary care physician. Thus, including those individuals on the IDT in the role of the primary care provider may prove to be more operationally feasible and cost-effective, particularly in rural areas or areas where labor costs may be high. We have approved requests by POs to waive the requirement at § 460.102(b)(1) and (c) so that primary medical care can be furnished by someone other than a primary care physician on the IDT, thus allowing POs to deliver care through a non-physician primary care provider (such as a nurse practitioner or physician assistant) or a community-based physician. We have typically granted such waivers, and we have not encountered any issues or concerns with the quality of care provided by non-physician primary care providers or community-based physicians acting in this capacity on behalf of and working collaboratively with the PACE primary care physician or medical director.

As we explained in the 1999 IFC (64 FR 66248) and the 2006 final rule (71 FR 71285), the role of primary care physician role on the IDT was based on the PACE Protocol and codified in regulation. In the 2006 final rule, we explained that we considered expanding this role to include nurse practitioners but decided to retain the PACE Protocol requirement. We noted our view at the time that it would be acceptable to include a nurse practitioner on the IDT, but it should be in addition to rather than instead of a primary care physician. We stated that such a change should be included in a proposed rule in order to allow for public comment on this issue; and in the meantime we would continue to assess the appropriateness of allowing nurse practitioners to assume the rule of the primary care physician consistent with state licensure requirements for nurse practitioners.

As discussed previously in this proposed rule, the PACE program agreement has replaced the PACE Protocol. As with certain other requirements that were based on the PACE Protocol, we believe the composition of the IDT needs to change to reflect evolving medical practices and technologies. We believe it is appropriate to expand the primary care physician role on the IDT to include certain other primary care providers. Accordingly, we are now proposing to revise § 460.102(b)(1) to specify that a primary care provider, rather than a primary care physician, must be part of the core IDT. Further, we are proposing to revise § 460.102(c)(1) to permit primary medical care to be furnished by a primary care physician, a community-based physician, a physician assistant (provided certain requirements are met), or a nurse practitioner (provided certain requirements are met). We are also proposing that § 460.102(c)(2) refer to primary care provider rather than primary care physician. These proposed changes would allow all POs to furnish primary care through these other types of providers, thereby reducing burden on the POs without compromising care. For physician assistants and nurse practitioners, we are proposing to add language in paragraphs (c)(1)(iii) and (iv) to require that they be licensed in accordance with state law and practice within their scope of practice as defined by state laws with regard to oversight, practice authority, and prescriptive authority. With increasing shortages of primary care providers across the country, we believe affording POs the flexibility to involve other non-physician practitioners practicing collaboratively with the PACE primary care physicians would enable the POs to accommodate more participants and expand their programs, without comprising quality of care. We propose redesignating the current language in paragraph (e) as paragraph (f) and, in a new paragraph (e), we propose to add language that references the requirements in § 460.71, which sets forth guidelines for the oversight of employees and contracted staff that have direct patient contact. Referencing § 460.71 should make it clear to POs that they must ensure that all members of the IDT demonstrate the skills necessary for the performance of their positions as required under § 460.71. Additionally, this will require the PO to confirm that all members of the IDT comply with state certification or licensure requirements for direct patient care in their respective settings. The PO and its medical director are responsible for the oversight of all care provided to PACE participants.

Currently, § 460.102(d)(3) states that the members of the IDT must serve primarily PACE participants. The primarily served requirement was part of the original PACE Protocol (64 FR 66249). However, section 903 of BIPA authorized the Secretary to modify or waive such provisions in a manner that responds promptly to the needs of PACE programs relating to areas of employment and the use of community-based primary care physicians. We are proposing to revise § 460.102(c)(1) to allow community-based physicians to fill the role of primary care provider on the IDT. Community-based physicians are different from the PACE primary care physician. The PACE primary care physician works for the PO and is responsible for all PACE participants within the PO. The community-based physician generally works in a different practice, outside of the PO, but may also contract with the PO in order to work with select PACE participants who prefer to continue to receive their primary care services from their community-based physician. Community-based physicians usually provide care for the patients in community settings, such as outpatient clinics, and many times patients in those community settings become PACE participants. Newly enrolled PACE participants often request to continue receiving care from their community-based physician. We want to allow this flexibility for PACE participants because we believe it supports the continuity of care for participants. We therefore are proposing to amend § 460.102(d)(3) to allow flexibility with respect to community-based physicians by excluding them from the requirement that they serve primarily PACE participants. Under this proposal, community-based physicians would be able to continue working in their community settings while contracting with the POs to provide PACE services. This proposal, in combination with the proposed revision to paragraph (b)(1), would effectively be a global waiver of the IDT member and ''primarily served'' requirements for community-based primary care physicians.

We also considered two alternative possibilities for revising parts of § 460.102 to provide greater flexibility to POs without compromising quality of care. In the first alternative, we considered deleting the requirements in § 460.102(b) related to the composition of the IDT. As noted previously, under sections 1894(f)(2)(B)(iii) and 1934(f)(2)(B)(iii) of the Act, the IDT approach to care management and service delivery is a requirement that cannot be waived. However, the PACE statutes do not specifically address the composition of the IDT. We continue to believe that a well-functioning IDT is critical to the success of the PACE program, as the team is instrumental in controlling the delivery, quality, and continuity of care. As we stated in the 1999 IFC (64 FR 66248), members of the IDT should be knowledgeable about the overall needs of the patient, not just the needs which relate to their individual disciplines. In order to meet all of the health, psychosocial, and functional needs of the participant, team members must view the participant in a holistic manner and focus on a comprehensive care approach. We considered whether to provide even greater flexibility to POs, while maintaining our expectation of a well-functioning, knowledgeable IDT, by deleting the IDT composition requirements in § 460.102(b). Under this alternative approach, we would expect the composition of the IDT could be tailored based on each individual participant and the PO would continue to assess the need for services and provide all necessary services. Similar to our proposed revisions to § 460.102(c) discussed previously, we would require that primary care be furnished by a PACE primary care provider. CMS and the SAA would continue to monitor POs to ensure that participants are receiving all necessary care. These monitoring activities would serve as a safeguard to help ensure there is no negative impact to the quality of care being provided.

We believe this alternative approach of deleting the IDT composition requirements in § 460.102(b) could provide greater flexibility to POs without compromising the quality of care. We invite public comment on this approach.

Similarly, in the second alternative, we considered deleting § 460.102(d)(3), which requires that members of the IDT must serve primarily PACE participants. Again, this requirement was based on the PACE Protocol, which has now been replaced by the PACE program agreement. As we stated in the both the 1999 IFC (64 FR 66249) and the 2006 final rule (71 FR 71286), for a frail elderly population, such as is served by the PACE program, it is important to support and retain measures that promote quality and continuity of care. If team members serve primarily PACE participants, they are able to develop a rapport with participants and are better able to plan for and provide their care. Over the years, we have received and approved numerous requests to waive the primarily served requirement for members of the IDT, such as the primary care physician or the Master's-level social worker in order to allow POs needed flexibility in staffing their IDTs. We have not encountered any issues or concerns after granting such waivers. Thus, we invite public comment on whether we should extend this flexibility to all POs without the need to request a waiver.

4. Participant Assessment (§ 460.104)

Section 460.104 sets forth the requirements for PACE participant assessments. As we explained in the 2006 final rule (71 FR 71288), the information obtained through the participant assessment is the basis for the plan of care developed by the IDT. As such, it is important that the assessment be as comprehensive as possible to capture all of the information necessary for the IDT to develop a plan of care that will adequately address all of the participant's functional, psychosocial, and health care needs.

Section 460.104(a) sets forth the requirements for the initial comprehensive assessment, which must be completed promptly following enrollment. Currently all members of the IDT must be present for the initial assessment, representing each required clinical discipline to appropriately assess the PACE participant's holistic needs and develop a customized plan of care. With this proposal, to the extent an IDT member serves multiple roles on the IDT, that member may represent the clinical expertise for which s/he is qualified. Other team members may be present as necessary. In § 460.104(a)(2), we state that certain members of the IDT must evaluate the participant in person as part of the initial comprehensive assessment but, in paragraph (a)(1), we do not specify that the initial comprehensive assessment must be an in-person assessment. Therefore, we are proposing to add the phrase ''in-person'' after ''initial'' in paragraph (a)(1). Our longstanding policy has been that the initial assessment is an in-person assessment, so the addition of this language should make this requirement clear but not change the current practice. We also are proposing to change the requirement that the initial comprehensive assessment be completed "promptly following enrollment" to "in a timely manner in order to meet the requirements in paragraph (b) of this section." This would allow the PO to complete this assessment at a time that works for the PO, but within a timely manner so as to allow the IDT to complete the development of the plan of care within 30 days of the date of enrollment, which is the timeframe that we are proposing later in this discussion.

Currently, during the initial comprehensive assessment, a primary care physician must evaluate the participant and develop a discipline-specific assessment of the participant's health and social status. We are proposing to change "primary care physician" to "primary care provider" in paragraphs (a)(2)(i) and (c)(1) to be consistent with proposed changes to the composition of the IDT in § 460.102. As discussed in section III.G.2. of this proposed rule, we are proposing that the primary care physician role be changed to primary care provider to allow other licensed primary care providers (for example, nurse practitioners, physician assistants, and community-based physicians) to be part of the core IDT.

In § 460.104(a)(2), we are proposing to remove the reference to IDT members initially evaluating participants "at appropriate intervals" because the scheduling of the discipline-specific assessments as part of the initial comprehensive assessment is up to the POs, and we believe stating that they must occur "at appropriate intervals" is unnecessary and superfluous language. We are proposing to change the language in § 460.104(a)(3) from "individual team members" to "the interdisciplinary team" so that language is consistent throughout these regulations and because it is the IDT's decision whether to include other professionals in the initial comprehensive assessment. Additionally, we are proposing to add the word "initial" before "comprehensive assessment" so it is clear that professionals may be included in the initial comprehensive assessment, as opposed to a reassessment. We are proposing two changes to § 460.104(a)(4) to clarify that the initial comprehensive assessment covers all aspects of the participant's physical, social, and mental needs. Currently, the heading is titled "Comprehensive assessment criteria." We are proposing to revise the heading to "Initial comprehensive assessment criteria." We also are proposing to add "in-person" to this section to make it consistent with the terminology in § 460.104(a)(1) and (2). We believe that an initial comprehensive assessment is a more valuable tool for identifying the participant's need for services when performed in person.

Section 460.104(b) states that the IDT must "promptly" consolidate discipline-specific assessments into a single plan of care for each participant through discussion "in team meetings." The term "promptly" does not provide definitive direction for an IDT to know when the discipline-specific assessment should be completed and incorporated into a plan of care. We are proposing to change this provision to specify that the plan of care must be completed "within 30 days of the date of enrollment" to remove the ambiguity of "promptly." We believe that 30 days balances the need for time to complete these activities with the need to complete these activities within a reasonable amount of time.

Moreover, it is our understanding that some POs interpret the term "team meeting" as requiring members of the IDT to be physically present in the meeting. We believe POs need the flexibility to determine the format and location of IDT discussions to best meet the needs of PACE participants while not burdening the IDT by requiring these discussions to be held in face-to-face meetings. In paragraph (b), we are proposing to change the words "discussion in team meetings" to "team discussions" to indicate that there must be a team discussion, but the format (for example, video conferencing, conference call, or in-person meeting) and location of the discussion would be at the discretion of the PO.

We also are proposing to create a new paragraph under § 460.104(b). Under new paragraph (b)(1), we are proposing to state that if the IDT determines from its assessment that any services associated with the comprehensive assessment criteria listed in paragraph (a)(4) do not need to be included in a participant's plan of care, the IDT must document in the participant's plan of care the reasons such services are not needed and are not being included. If the IDT does not believe a PACE participant needs a certain service as it relates to the IDT care plan assessment findings and therefore does not authorize that service, the IDT must document the rationale for not including the service in the plan of care. CMS expects the plan of care to reflect that the participant was assessed for all services even where a determination is made that certain services were unnecessary at that time. We are proposing to move the current requirement in paragraph (b)—that female participants must be informed that they are entitled to choose a qualified specialist for women's health services from the PACE organization's network to furnish routine or preventive women's health services—to new paragraph (b)(2).

Currently, § 460.104(c) sets forth the requirements for periodic reassessments, including semiannual and annual reassessments. Section 460.104(d) discusses the requirements for unscheduled reassessments. Our experience has demonstrated that the requirement to perform both semiannual and annual reassessments can be overly burdensome and unnecessary in that participants are consistently being monitored for changes and are already reassessed whenever there is a change in their health status. Accordingly, we are proposing to delete the requirement in paragraph (c)(2) requiring the annual reassessments by the physical therapist, occupational therapist, dietician, and home care coordinator. We are proposing to delete corresponding references to annual reassessments in paragraph (d). We would keep the requirement that PACE participants be reassessed semiannually, every 6 months. We would change the list of IDT members that must conduct the semiannual assessment to include the primary care provider, registered nurse, Master's level social worker, and any other IDT members actively involved in the development or implementation of the participant's plan of care, as determined by the IDT members whose attendance is required. We believe PACE participants should be reassessed at least every 6 months as this will better ensure that PACE participants, who are generally frail, are receiving appropriate treatment. We are proposing to remove "recreational therapist or activity coordinator" from the list of IDT members that must participate in the semiannual reassessment. We believe reducing the IDT members who are required to participate in the semi-annual assessment will reduce the burden on POs and allow the POs to allocate their resources more efficiently, while still meeting the care needs of participants. POs have reported that recreational therapists and activity coordinators are not needed at every reassessment. POs further report that to require that recreational therapists or activity coordinators be present at every semiannual reassessment is unnecessary and can be overly burdensome. However, recreational therapists or activity coordinators are part of the IDT and can update the IDT on the participants' successes or needs for recreational therapy or involvement in activities. We believe that the primary care provider, registered nurse, and Master's level social worker can collectively determine, based on the participant's plan of care and IDT discussions, which other IDT members should be present during the semiannual assessment. As such, we do not believe we need to require that the recreational therapist or activity coordinator be present at the semiannual reassessment unless the primary care provider, registered nurse, and Master's level social worker determine that the recreational therapist or activity coordinator needs to be present because that individual is actively involved in the development or implementation of the participant's plan of care.

The requirements for semiannual reassessments are currently at paragraphs (c)(1)(i) through (iii) and would be redesignated as paragraphs (c)(1) through (3). In the redesignated paragraph (c)(1), we would revise "physician" to "provider" for consistency with the proposed revisions previously discussed in this section. We are proposing to redesignate paragraph (c)(1)(v) as (c)(4) and revise the provision to delete the example because we believe the example is unnecessary.

Section 460.104(d) discusses unscheduled reassessments. As discussed previously, we are proposing changes to paragraph (d) to remove the reference to annual reassessments. We are proposing to change the language in paragraph (d)(1) from "listed in paragraph (a)(2) of this section" to "listed in paragraph (c) of this section." This proposal would change the requirement for unscheduled reassessments in the case of a change in participant status so that only the IDT members listed in paragraph (c) will have to conduct the unscheduled reassessment. Specifically, the primary care provider, registered nurse, Master's-level social worker, and other team members actively involved in the development or implementation of the participant's plan of care would conduct the participant's unscheduled reassessment. Similarly, we are proposing to change paragraph (d)(2) regarding unscheduled reassessments at the request of the participant or the participant's designated representative. Instead of stating that if a participant (or designated representative) believes that the participant needs to initiate, eliminate, or continue a particular service, the appropriate members of the IDT, as identified by the IDT, must conduct an in-person reassessment, the provision would state that if a participant (or designated representative) requests to initiate, eliminate, or continue a particular service, the IDT members specified in § 460.104(c) must conduct an in-person reassessment. As with the semiannual reassessments, we believe reducing the number of IDT members that are required to conduct the unscheduled reassessments will reduce the burden on POs and allow the POs to allocate their resources more efficiently, while still meeting the care needs of participants. Further, we believe that the primary care provider, registered nurse, and Master's level social worker can collectively determine, based on the participant's plan of care and IDT discussions, which team members should conduct the unscheduled reassessment in this instance. We note that, under § 460.64, PO staff with direct participant contact must only act within the scope of their authority to practice, so if the IDT members listed in paragraph (c) believe a participant may need care that is not within the scope of their respective practices, those members would need to involve other IDT members as appropriate. For these reasons, we do not believe we need to require all core members of the IDT to conduct unscheduled reassessments.

5. Plan of Care (§ 460.106)

Section 460.106 requires that the IDT establish, implement, coordinate, and monitor a comprehensive plan of care for each participant. The purpose of the plan of care is to help support the identification of potential or actual areas of improvement and monitor progression and outcomes. The current regulatory language pertaining to the basic requirement and the content of the plan of care in this section has been described by POs as confusing and unclear. Therefore, we are proposing to revise this section by adding requirements to provide more clarity without changing the fundamental aspects of the plan of care process.

First, we are proposing to change § 460.106(a) from requiring that a plan of care be developed promptly to state that the plan of care must be developed "within 30 days of the date of enrollment." The term "promptly" does not provide definitive direction for an IDT to know when the discipline-specific assessments under § 460.104(b) should be completed and incorporated into a plan of care. Requiring that the plan of care be developed within 30 days of the date of enrollment balances the need for time to complete the assessments and develop a plan of care with the need to complete the plan of care within a reasonable time frame. This proposed change is consistent with our proposed changes to § 460.104(b), which we discussed previously in this section.

Next we are proposing to add language to clarify which members of the IDT are required to develop the plan of care within 30 days. The proposed language states that the IDT members specified in § 460.104(a)(2) must develop the plan of care for each participant based on the initial comprehensive assessment findings. The added language aims to clarify for POs which members of the IDT should develop the plan of care. The IDT members in § 460.104(a)(2) are members of the IDT that are required to conduct the initial comprehensive assessment. As under current guidance, the IDT remains responsible for developing the plan of care based on the initial discipline-specific assessments.

Section 460.106(b) sets forth the content of the plan of care and states that the plan of care must meet the following requirements:

- Specify the care needed to meet the participant's medical, physical, emotional and social needs, as identified in the initial comprehensive assessment;
- Identify measurable outcomes to be achieved.

We believe these requirements are appropriate, but may have, in the past, led to confusion regarding the overall purpose, goal, creation, implementation and follow-up process of the plan of care. Current regulations do not explicitly require POs to follow industry standards in developing and following care plan interventions. We believe that adding new requirements will help POs to effectively and efficiently identify and address each participant's care planning needs. Therefore, we are proposing to add three new requirements to § 460.106(b). In paragraph (b)(3), we are proposing to require that the plan of care utilize the most appropriate interventions (for example, care improvement strategies) for each of the participant's care needs that advances the participant toward a measurable goal and desired outcome. In paragraph (b)(4), we are proposing to require that the plan of care identify each intervention and how it will be implemented. Interventions should be targeted, specific actions implemented to improve a participant's health care outcome. And finally, in paragraph (b)(5), we are proposing to require that the plan of care identify how each intervention will be evaluated to determine progress in reaching specified goals and desired outcomes.

H. Subpart G—Participant Rights

1. Specific Rights to Which a Participant is Entitled (§ 460.112)

Section 460.112 describes the specific rights of PACE participants, including, in paragraph (b)(1), the right to be fully informed in writing of services available from the PO:

- Before enrollment;
- At enrollment; and
- At the time a participant's needs necessitate the disclosure and delivery of such information to allow informed choice.

We are proposing to combine paragraphs (b)(1)(i) and (ii) into proposed paragraph (b)(1)(i) to state that information about PACE services will be provided "prior to and upon enrollment" in the PO, and to redesignate current paragraph (b)(1)(iii) as paragraph (b)(1)(ii), in an effort to simplify the language and regulatory construction.

Section 460.112(b)(3) states that each participant has the right to examine, or upon reasonable request, to be assisted in examining the results of the most recent review of the PO conducted by CMS or the SAA and any plan of correction in effect. We are proposing to make a technical change to § 460.112(b)(3) by deleting the language "to be assisted" and replacing it with "to be helped." This proposed change is not a substantive change, but rather an effort to simplify the language.

Sections 1894(c)(5)(A) and 1934(c)(5)(A) of the Act provide that participants must be permitted to voluntarily disenroll from PACE without cause at any time. Accordingly, § 460.112(c)(3) states that each PACE participant has the right to disenroll from the program at any time. We have operationalized this requirement by allowing participants to provide notice of voluntary disenrollment at any time and making that disenrollment effective on the first day of the month after the PO receives the notice. Consistent with our current practice, we are proposing to revise paragraph (c)(3) to state that the participant has the right to disenroll from the program at any time and have such disenrollment be effective the first day of the month following the date the PACE organization receives the participant's notice of voluntarily disenrollment as set forth in § 460.162(a). As discussed in section III.J.5. of this proposed rule, we are proposing a corresponding revision to § 460.162 that would state, in a new paragraph (a), that a voluntary disenrollment is effective on the first day of the month following the date the PO receives the participant's notice of voluntary disenrollment. Because POs receive a monthly capitation payment from Medicare and/or Medicaid in advance, we effectuate the disenrollment at the end of the capitated payment period.

2. Explanation of Rights (§ 460.116)

Section 460.116 sets forth requirements for POs with respect to explanation of rights, such as having written policies and procedures on these rights, explaining the rights, and displaying the rights. Section 460.116(c)(1) provides that the PO must write the participant rights in English and in any other principal languages of the community. Consistent with our proposal regarding marketing materials under § 460.82(c)(1), which we discuss in section III.F. of this proposed rule, we are proposing to specify that if a state has not established a standard for making the principal language determination, a principal language of the community is any language spoken in the home by at least 5 percent of the individuals in the PO's service area. As noted previously, we established a similar 5 percent language threshold for marketing materials in the Medicare Advantage program (see § 422.2264(e)), and we believe this threshold is also appropriate for PACE because of the similarities in population make-up between the Medicare Advantage program and PACE. Moreover, CMS strives to create harmony across program requirements when feasible. This reduces complexity for those organizations that operate multiple programs.

Section 460.116(c)(2) states that the PO must display the participant rights in a prominent place in the PACE center. We are proposing to add the word "PACE" before the words "participant rights" to specify that participant rights specific to PACE must be displayed. During CMS audits of POs, we have observed that POs have displayed rights pertaining to the adult day center or other rights, and not those specific to the PACE program, in the PACE center. The proposed language would explicitly state that the PACE participant rights must be posted in the PACE center.

3. PACE Organization's Appeals Process (§ 460.122)

Section 460.122 sets forth the requirements for a PO's appeals process. Section 460.122(c)(1) states that a PO's appeals process must include written procedures for timely preparation and processing of a written denial of coverage or payment as provided in § 460.104(c)(3). In the 2006 final rule, we redesignated paragraph (c)(3) as paragraph (d) in § 460.104, but we inadvertently did not make the corresponding change to the citation referenced in § 460.122(c)(1) (see 71 FR 71292, 71336, and 71337). Therefore, we are proposing to amend § 460.122(c)(1) to provide the correct citation reference to the standards for a written denial notice by changing it from § 460.104(c)(3) to § 460.104(d)(2)(iv).

I. Subpart H—Quality Assessment and Performance Improvement

As discussed in section III.A. of this proposed rule, to update the terminology to comport with that used in other CMS programs, we are proposing to replace all references to "quality assessment" and "performance improvement" with "quality improvement" throughout part 460, including the heading for subpart H and the titles of various sections. In this section, we discuss the other changes we are proposing to subpart H.

1. General Rule (§ 460.130)

Sections 1894(e)(3)(B) and 1934(e)(3)(B) of the Act require that, under a PACE program agreement, the PO, CMS, and the SAA shall jointly cooperate in the development and implementation of health status and quality of life outcome measures with respect to PACE participants. Section 460.130 requires a PO to develop, implement, maintain, and evaluate a quality assessment and performance improvement program, which reflects the full range of services furnished by the PO. Further, a PO must take actions that result in improvement in its performance in all types of care.

Section 460.140 refers to additional quality assessment activities related to reporting requirements. We are proposing to move the requirement in § 460.140 to § 460.130 as new paragraph (d), so that all of the general rules for quality improvement would be part of the first section in subpart H. This proposed change would leave no requirements under § 460.140, so we are also proposing to remove § 460.140.

2. Quality Assessment and Performance Improvement Plan (§ 460.132)

Section 460.132 sets forth our current requirements with respect to a Quality Assessment and Performance Improvement (QAPI) plan. We are proposing to revise the requirements for a QAPI plan in § 460.132. In addition to the terminology change that we discussed previously (replacing all references to "quality assessment performance improvement" with the term "quality improvement"), we are proposing to revise paragraph (a) to require a PO to have a written quality improvement plan that is collaborative and interdisciplinary in nature. The PACE program is unique in its structure in that it has a collaborative and interdisciplinary approach in treatment of PACE participants. We believe that a PO's quality improvement plan should reflect this collaboration and interdisciplinary approach in its improvement goals. That is, any time the PO's governing body develops a plan of action to improve or maintain the quality of care, the plan should focus on the collaborative and interdisciplinary nature of the PACE program. For example, a PO may identify as a goal the need to improve its organization's overall fall incident rate, and develops a plan of action to address this need that involves soliciting recommendations concerning this issue from its staff and contracted resources (for example, pharmacists, physicians, social workers, transportation providers, and physical therapists). This plan of action is collaborative because it involves input from staff and IDT members with experience and knowledge, and it is interdisciplinary because those individuals have different skills, levels of education and professional backgrounds and different perspectives on how to improve the fall rate. We believe requiring a collaborative and interdisciplinary quality improvement plan will help POs identify and improve PACE quality issues more appropriately. Therefore, we are proposing to revise paragraph (a) to require a PO to have a written quality improvement plan that is collaborative and interdisciplinary in nature.

3. Additional Quality Assessment Activities (§ 460.140)

For the reasons discussed in section III.I.1. of this proposed rule, we are proposing to redesignate the content of § 460.140 as § 460.130, and therefore we are proposing to remove § 460.140.

J. Subpart I—Participant Enrollment and Disenrollment

1. Eligibility To Enroll in a PACE Program (§ 460.150)

In accordance with sections 1894(a)(5) and (c)(1) and 1934(a)(5) and (c)(1) of the Act, we established § 460.150 to specify the requirements for eligibility to enroll in a PACE program. Section 460.150(c)(1) provides that, at the time of enrollment, an individual must be able to live in a community setting without jeopardizing his or her health or safety, and § 460.150(c)(2) states that the eligibility criteria used to determine whether an individual's health or safety would be jeopardized by living in a community setting must be specified in the program agreement. As we explained in the 2006 final rule (71 FR 71309), determining whether an individual's health or safety would be jeopardized by living in the community involves assessing the individual's care support network as well as the individual's health condition. This assessment is done by the PO based upon criteria established by the state and specified in the PACE program agreement. We are proposing to codify this longstanding policy in our regulations by revising § 460.150(c)(2) to include a reference to the SAA criteria used to determine if an individual's health or safety would be jeopardized by living in a community setting, to indicate that these criteria are developed by the SAA.

2. Enrollment Process (§ 460.152)

Section 460.152 specifies the PO's responsibilities during the intake process and actions required in the event a potential PACE participant is denied enrollment because his or her health or safety would be jeopardized by living in a community setting. Section 460.152(b)(4) states that the PO must notify CMS and the SAA if a prospective participant is denied enrollment because his or her health or safety would be jeopardized by living in a community setting and make the documentation available for review. We are proposing to add language to paragraph (b)(4) to require that such notification be in the form and manner specified by CMS, as this would reflect our current practice of requiring POs to provide these notifications to CMS and the SAA electronically.

3. Enrollment Agreement (§ 460.154)

Section 460.154 specifies the general content requirements for the enrollment agreement. Section 460.154(i) states that the enrollment agreement must contain notification that enrollment in PACE results in disenrollment from any other Medicare or Medicaid prepayment plan or optional benefit. It further provides that electing enrollment in any other Medicare or Medicaid prepayment plan or optional benefit after enrolling as a PACE participant is considered a voluntary disenrollment from PACE. We are concerned about possible misinterpretations of this provision, and thus are proposing to add language to paragraph (i) to state that if a Medicaid-only or private pay PACE participant becomes eligible for Medicare after enrollment in PACE, he or she will be disenrolled from PACE if he or she elects to obtain Medicare coverage other than from his or her PO.

4. Other Enrollment Procedures (§ 460.156)

Section 460.156 specifies the documentation and information that a PO must provide to a PACE participant who signs an enrollment agreement, as well as to CMS and the SAA. Sections § 460.156(a)(2) and (4) state that, after the participant signs an enrollment agreement, the PO must give the participant a PACE membership card and stickers for his or her Medicare and Medicaid cards, as applicable, which indicate that he or she is a PACE participant and include the phone number of the PO, respectively. We are proposing to delete the sticker requirement currently at § 460.156(a)(4) and revise the PACE membership card requirement at § 460.156(a)(2) so the PO would give the participant a PACE membership card that indicates that he or she is a PACE participant and that includes the phone number of the PO. This would not only ensure that the participant's Medicare and Medicaid cards are not damaged if stickers are removed in the event the participant disenrolls from PACE, but also would save participants from having to carry their Medicare and Medicaid cards with them, a practice we generally discourage based on the risk that a beneficiary's personal information may be lost or exposed.

5. Voluntary Disenrollment (§ 460.162)

In accordance with sections 1894(c)(5)(A) and 1934(c)(5)(A) of the Act, § 460.162 states that a PACE participant may voluntarily disenroll without cause from the program at any time. We are proposing to retain this language in new paragraph (b) and add new paragraphs (a) and (c). In paragraph (a), we are proposing to add language stating that a participant's voluntary disenrollment is effective on the first day of the month following the date the PO receives the participant's notice of voluntary disenrollment. As described previously in our discussion of proposed changes to § 460.112(c)(3), we have operationalized the statutory requirements regarding voluntary disenrollment by allowing participants to provide notice of voluntary disenrollment at any time and making that disenrollment effective on the first day of the month after the PACE organization receives the notice. Thus, the proposed requirement in § 460.162(a) would be consistent with our current practice.

Sections 1894(c)(5)(A) and 1934(c)(5)(A) of the Act state that enrollment and disenrollment of PACE program eligible individuals in a PACE program must be under regulations and the PACE program agreement with certain statutory restrictions. Moreover, sections 1894(b)(1)(A)(i) and 1934(b)(1)(A)(i) of the Act state that, under the PACE program agreement, a PO must provide all items and services covered under titles XVIII (Medicare) and XIX (Medicaid). Through record review during on-site audits and follow-up to family or participant grievances and complaints, we have encountered some instances in which a participant needed additional services and was encouraged to voluntarily disenroll by either an employee or contractor of the PO in an effort to reduce costs for the PO. To help prevent this, we are proposing to affirmatively require at § 460.162(c) that POs ensure their employees or contractors do not engage in any practice that would reasonably be expected to have the effect of steering or encouraging disenrollment of PACE participants due to a change in health status. We note that, under § 460.40(c), a PO would be subject to sanctions for engaging in this type of behavior—that is, discriminating in disenrollment among Medicare or Medicaid beneficiaries on the basis of an individual's health status or need for health care services.

6. Involuntary Disenrollment (§ 460.164)

Section 460.164 specifies the conditions under which a PACE participant can be involuntarily disenrolled from a PACE program. The reasons for involuntary disenrollment are derived from sections 1894(c)(5)(B) and 1934(c)(5)(B) of the Act, additional statutory requirements (for example, the PACE program agreement is not renewed, or the participant no longer meets the state Medicaid nursing facility level of care requirements), and the PACE Protocol. We are proposing to redesignate paragraphs (a) through (e) as paragraphs (b) through (f) and to add new paragraph (a) that specifies that a participant's disenrollment occurs after the PO meets the requirements in this section and is effective on the first day of the next month that begins 30 days after the day the PACE organization sends notice of the disenrollment to the participant. For example, if a PACE organization sends a disenrollment notice on April 5, the disenrollment would be effective June 1—30 days after April 5 is May 5, and the first day of the next month after May 5 is June 1. We are proposing to add this requirement to make it clear when a participant's involuntary disenrollment is effective. Additionally, we are proposing to add this requirement to protect participants' due process, as our regulations and guidance do not currently include an advance notice requirement. We note that the PO must not send the disenrollment notice until the SAA has reviewed the proposed involuntary disenrollment and determined that the PO has adequately documented acceptable grounds for disenrollment, as required by current paragraph (e) (proposed paragraph (f)). We believe 30 days would provide sufficient time for an individual to gather documentation, medical records, or other information in order to respond to the PO's proposed disenrollment action, should he or she disagree. Without the 30 days of advance notice, a PO could notify a participant about an involuntary disenrollment late in the month and make the effective date of the involuntary disenrollment the first day of the following month, only a few days away. This would not allow sufficient time for a participant to contest the disenrollment or to effectively coordinate a transition to other care and services.

Section 460.164(a) currently states the reasons a participant may be involuntarily disenrolled from PACE. Paragraph (a)(1) states that the PO may involuntarily disenroll a participant for failing to pay, or to make satisfactory arrangements to pay, any premium due the PO after a 30-day grace period. As noted previously, we are proposing to redesignate (a)(1) as paragraph (b)(1) and would restructure the sentence to clarify that the 30-day grace period applies to both failure to pay and failure to make satisfactory arrangements to pay any premium due the PO. We are proposing the change because we believe the current sentence structure creates confusion as to whether the grace period applies to both payment of the premium "and" making satisfactory arrangements to pay. The proposed revision would clarify that an involuntary disenrollment cannot be initiated due to a participant's failure to pay until after a 30-day grace period for the participant to pay or to make satisfactory arrangements to pay. Satisfactory arrangements could be, for example, a participant's agreement to pay through installments, or agreement to pay within a specific time period.

We also are proposing to redesignate paragraphs (a)(2) through (6) as paragraphs (b)(4) through (8) and to add two additional reasons for involuntary disenrollment in new paragraphs (b)(2) and (3). In paragraph (b)(2), we are proposing new language that would permit involuntary disenrollment if the participant, after a 30-day grace period, fails to pay or make satisfactory arrangements to pay any applicable Medicaid spenddown liability or any amount due under the post-eligibility treatment of income processes as permitted under §§ 460.182 and 460.184. Section 1934(i) of the Act as well as §§ 460.182(c), 460.184, 460.152, and 460.154 pertain to these payment amounts. Under section 1934(i) of the Act and § 460.184(a), a state may provide for post-eligibility treatment of income for participants in the same manner as a state treats post-eligibility income for individuals receiving services under a Medicaid waiver under section 1915(c) of the Act. Section 460.182(c)(1) requires that the PO accept the Medicaid capitation payment as payment in full "except" for payment with respect to spenddown liability and post-eligibility treatment of income. Section 460.152(a)(1)(iv) and (v) requires that PACE staff explain specific information to the potential participant and his or her representative or caregiver, including any Medicaid spenddown obligation and post-eligibility treatment of income. Section 460.154(g) requires that a participant that is Medicaid eligible or a dual eligible be notified and required to acknowledge in writing that he or she may be liable for any applicable spenddown liability and amount due under the post-eligibility treatment of income process. Operationally, a PO needs the ability to involuntarily disenroll participants based on nonpayment of these amounts. Participants are obligated to pay these amounts as part of the PO's overall reimbursement for care and services provided through the program. Moreover, we understand that a participant's failure to pay these amounts can have a significant financial impact on the PO. Continued insufficient reimbursement to the PO on an ongoing basis could affect the PO's financial viability and its ability to continue operations. CMS has previously addressed this issue for many POs through approval of waivers, but we believe that addressing it through a regulatory change is more efficient and is permitted under the PACE statutes. Moreover, as with any involuntary disenrollment, an involuntary disenrollment based on nonpayment of applicable Medicaid spenddown liability or any amount due under the post-eligibility treatment of income process must be reviewed by the SAA to determine that the PO has adequately documented acceptable grounds for disenrollment before it becomes effective.

In paragraph (b)(3), we are proposing to add language that would permit involuntary disenrollment in situations where the participant's caregiver engages in disruptive or threatening behavior. We also are proposing to redesignate current paragraphs (b)(1) and (2) as paragraphs (c)(1)(i) and (ii), respectively, and to add new paragraph (c)(2) to describe what we consider to be disruptive or threatening behavior of a participant's caregiver.

Specifically, we are proposing that a PACE participant may be involuntarily disenrolled from the PO if a participant's caregiver engages in disruptive or threatening behavior that jeopardizes the participant's health or safety, or the safety of the caregiver or others. This would include any family member involved in the participant's care. We believe that sections 1894(c)(5)(B) and 1934(c)(5)(B) of the Act, which state that a PO may not disenroll a participant except for engaging in disruptive or threatening behavior, as defined in such regulations (developed in close consultation with SAAs), could be read to include a caregiver. Further, the PACE Protocol listed as a basis for involuntary disenrollment that the participant "experiences a breakdown in the physician and/or team-participant relationship such that the PO's ability to furnish services to either the participant or other participants is seriously impaired," which we believe could include disruptive or threatening behavior of a caregiver (see 64 FR 66300).

Although we previously stated in the 2006 final rule (71 FR 71316) that we would not include as a basis for disenrollment the disruptive or threatening behavior of family members that are involved in the participant's care, as we have gained more experience with PACE, we realize that it is not always possible for a PO to establish alternative arrangements that would not disrupt the PO's ability to provide adequate services to the participant in situations where the caregiver is engaging in threatening or disruptive behavior. Given the variety of settings in which POs provide services, including the PACE center and the participant's home, there may be situations where the caregiver's disruptive or threatening behavior jeopardizes the health or safety of the participant, other PACE participants, staff, or visitors and it is not be feasible to establish alternative arrangements. CMS has already approved waivers for involuntary disenrollment, several of which address disruptive or threatening caregiver behavior. The requests for waivers have come from POs that have experienced situations where their ability to safely and effectively care for participants is potentially compromised by the behavior of the participant's caregiver that jeopardizes the health or safety of others including other participants, staff, or visitors. The proposed revision would obviate the need for those waivers, thereby reducing the burden on POs, states, and CMS.

POs must only pursue involuntarily disenrollment of a participant based on a caregiver's behavior after it has engaged in efforts to resolve the situation and has documented all of those efforts. As set forth in current paragraph (e) (proposed paragraph (f)), all involuntary disenrollments require a review and final determination by the SAA before they can become effective, so as to ensure that the PO has adequately documented acceptable grounds for disenrollment. As discussed in § 460.168, when a PACE participant is disenrolled from the PO, the PO must facilitate a participant's enrollment into other Medicare or Medicaid program for which the participant is eligible and must make sure medical records are available to the new providers. This will help ensure that the participant receives needed care. Note that we are not proposing a similar change to § 460.164(b)(2) (proposed paragraph (c)(2)), which refers to involuntary disenrollment of a participant with decision-making capacity who consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement. A PO cannot involuntarily disenroll a participant based on the caregiver's noncompliance with the participant's plan of care or terms of the PACE enrollment agreement.

7. Effective Date of Disenrollment (§ 460.166)

Section 460.166 is currently titled "Effective date of disenrollment;" however, it focuses on the PO's responsibilities when disenrolling a participant. Therefore, we are proposing to change the title to "Disenrollment responsibilities" to better describe the subject of this section.

8. Reinstatement in Other Medicare and Medicaid Programs (§ 460.168)

Section 460.168 describes the PO's responsibility to facilitate a participant's reinstatement in other Medicare and Medicaid programs after disenrollment. Section 460.168(a) states that a PO must make appropriate referrals and ensure that medical records are made available to new providers in a "timely manner." To ensure POs interpret "timely manner" uniformly, we are proposing to change "in a timely manner" to "within 30 days," which would help ensure a smooth transition for participants. We are proposing 30 days because we believe this balances the need to give the PO adequate time to gather the medical records, make copies, and deliver them to the new providers with the need to ensure that new providers receive the medical records as soon as possible to help ensure a smooth transition for the participant and continued access to medications and other needed ongoing care.

K. Subpart J—Payment

1. Medicaid Payment (§ 460.182)

Section 1934(d) of the Act requires a state to make prospective monthly capitated payments for each PACE program participant eligible for medical assistance under the state plan. The capitation payment amount must be specified in the PACE program agreement and be less, taking into account the frailty of PACE participants, than the amount that would otherwise have been paid under the state plan if the individuals were not enrolled in a PACE program. There is no national Medicaid rate-setting methodology for PACE; rather, each state that elects PACE as a Medicaid state plan option must develop a payment amount based on the cost of comparable services for the state's nursing facility-eligible population. Generally, the amounts are based on a blend of the cost of nursing home and community-based care for the frail elderly. The monthly capitation payment amount is negotiated between the PO and the SAA and can be renegotiated on an annual basis.

We implemented the PACE statutory requirements for Medicaid payment in § 460.182. Section 460.182(b) states that the monthly Medicaid capitation payment is negotiated between the PO and the SAA and specified in the PACE program agreement, and the amount meets certain criteria set forth in paragraphs (b)(1) through (4). Consistent with our proposed revisions to § 460.32(a)(12) of this proposed rule, we are proposing to revise § 460.182(b) to require that the PACE program agreement contain the state's Medicaid capitation rate or the "methodology" for establishing the Medicaid capitation rates. As a result of changes to the methods states are using to determine capitation rates, which can result in varied payment based on frailty of the population and performance incentive payments, we have found that specifying the capitation amount in the program agreement is sometimes operationally impractical. Additionally, because many states update their PACE Medicaid capitation rates annually based on the state fiscal year, there are operational challenges associated with updating the PACE program agreement appendices to reflect changes to the Medicaid rates. We believe that providing the option of including the state's methodology for calculating the Medicaid capitation payment amount is consistent with the statutory requirement in section 1934(d)(2) of the Act that the program agreement specify how the PO will be paid for each Medicaid participant, and will result in less burden for POs, states and CMS by eliminating the frequency of updates to the PACE program agreement to reflect the routine changes to the PACE Medicaid capitation rates.

We are also proposing to redesignate paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5) and add a new paragraph (b)(3), which would require that the monthly capitation amount paid by the SAA be sufficient and consistent with efficiency, economy, and quality of care. Current paragraph (b)(1) requires that the Medicaid rate be less than what otherwise would have been paid if the participants were not enrolled in PACE, which in essence establishes an upper bound under which the rate must fall. While current paragraph (b)(2) also requires that the rate take into account the comparative frailty of PACE participants, the regulation does not require that the rate be adequate or sufficient to provide the services required under the PACE program for the enrolled population. Since the rate is only required to be less than what would have otherwise been paid by Medicaid outside of PACE, there is no lower bound for the rate. We are proposing the new language to ensure that the Medicaid rate paid under the PACE program agreement is not only less than what would otherwise have been paid outside of PACE for a comparable population, but is also sufficient for the population served under the PACE program, which we believe means not lower than an amount that would be reasonable and appropriate to enable the PO to cover the anticipated service utilization of the frail elderly participants enrolled in the program and adequate to meet PACE program requirements. We are also proposing that the monthly capitation amount be consistent with efficiency, economy, and quality of care. By efficiency and economy, we mean that the payment amount must reflect that POs bring more efficiencies to the administration, management and oversight of participant care because they are singularly responsible for all of a participant's care (including acute and long term care services), which in many cases outside of PACE are managed by multiple provider entities. While the efficiencies of providing and coordinating all of a participant's care can result in lower expenditures as compared to a more fragmented payment system with multiple providers and entities providing different aspects of an individual's care, the Medicaid monthly capitation amount must also enable the PO to ensure participant access to quality care and services to meet the participant's needs. Failure to provide adequate reimbursement to POs could negatively affect participant care through reduced care and service authorizations, as well as limit resources for the PO to promote program goals such as quality of care, improved health, community integration of participants, and cost containment, where feasible.

Additionally, we would like to solicit comments about other rate methodologies we may consider requiring for Medicaid capitation payment amounts for PACE. We are seeking input to determine whether or not there could be other rate setting methodologies for PACE that are more consistent and competitive with rate setting methodologies used for other programs that provide similar services to similar populations on a capitated basis. For example, Medicaid rates for many of the state financial alignment demonstrations require actuarially sound rates. We note, however, that any change to the PACE rate setting requirements would need to ensure that the rates are still less than the amount that would otherwise have been made under the state plan if individuals were not enrolled in PACE and be adjusted to take into account the comparative frailty of PACE enrollees, which is required under section 1934(d)(2) of the Act. We are not proposing changes to the rate methodology for Medicaid capitation payments in this proposed rule; however, we will use public comment to inform possible future PACE rulemaking concerning Medicaid capitation payments.

L. Subpart K—Federal/State Monitoring

1. Monitoring During Trial Period (§ 460.190) and Ongoing Monitoring After Trial Period (§ 460.192)

Sections 1894(e)(4)(A) and 1934(e)(4)(A) of the Act require the Secretary, in cooperation with the SAA, to conduct a comprehensive annual review of the operation of a PO during its trial period in order to assure compliance with the requirements of sections 1894 and 1934 of the Act and PACE regulations. The trial period is defined as the first 3 years of the PO's contract with CMS and the SAA. Sections 1894(e)(4)(A) and 1934(e)(4)(A) of the Act further provide that the review must include: An onsite visit; a comprehensive assessment of the PO's fiscal soundness; a comprehensive assessment of the PO's capacity to provide PACE services to all enrolled participants; a detailed analysis of the PO's substantial compliance with all significant requirements of sections 1894 and 1934 of the Act and PACE regulations; and any other elements the Secretary or the SAA considers necessary or appropriate. Sections 1894(e)(4)(B) and 1934(e)(4)(B) of the Act provide that the Secretary, in cooperation with the SAA, must continue to conduct reviews of the operation of the PO after the trial period as may be appropriate, taking into account the performance level of a PO and compliance of a PO with all significant requirements of sections 1894 and 1934 of the Act and PACE regulations. Sections 1894(e)(4)(C) and 1934(e)(4)(C) of the Act provide that the results of the reviews must be reported promptly to the PO, along with any recommendations for changes to the PO's program, and made available to the public upon request.

Sections 460.190 and 460.192 set forth the requirements for monitoring during and after the trial period, respectively. These regulations currently incorporate requirements from the PACE Protocol that exceeded statutory requirements in that § 460.190(b)(1) details specific activities that must occur onsite during the trial period reviews, and § 460.192(b) requires that, after a PO's trial period ends, ongoing reviews be conducted onsite at least every 2 years. We are proposing to revise these provisions of the existing regulations.

In the 15 years since the initial PACE regulations were established, the PACE program has flourished and we have gained significant program experience with respect to oversight and monitoring of POs. We no longer believe that the activities listed in § 460.190(b)(1)(i) through (v) must be performed while onsite at the PACE location; technology affords us the opportunity to complete these tasks remotely. For example, we have implemented the use of webinar technology in the performance of similar program audits of Medicare

Advantage organizations and Part D sponsors. This technology allows the entity being reviewed to provide CMS access to information on its computer systems in real time, in a secure manner. It also allows reviewers to interact with the entity being reviewed and its staff, while not being physically present in the building with them. The use of this technology has saved significant resources in travel dollars and staff downtime (experienced while they are traveling). Therefore, we are proposing to delete the list of specific activities that may be performed as part of an onsite visit as currently set forth in the paragraphs located in § 460.190(b)(1)(i) through (v). We are also proposing revisions to the language at § 460.190(b)(1) and a new § 460.190(b)(2) to more closely mirror the text of statute. The proposed revised language retains the obligation that CMS conduct an onsite visit to observe the PO's operations. However, it affords reviewers the flexibility to conduct other portions of the review remotely. Greater flexibility to conduct portions of the review remotely would allow our reviews of POs to gain some of the same efficiencies that CMS currently achieves through the use of web-based technologies in other programs. Specifically, we are proposing in the revised § 460.190(b)(1) that the trial period review include an onsite visit to the PO, which may include, but is not limited to, observation of program operations, and proposing a separate requirement in the new § 460.190(b)(2) that the trial period review include a detailed analysis of the entity's substantial compliance with all significant requirements of sections 1894 and 1934 of the Act and the PACE regulations, which may include review of marketing, participant services, enrollment and disenrollment, and grievances and appeals. We are retaining the language found in current paragraphs (b)(2), (3), and (4), but propose to redesignate these as paragraphs (b)(3), (4), and (5).

Section 460.192(b) of the current regulations establishes the obligation for continued oversight after the trial period, including the requirement for an onsite review of every PO every 2 years. As the PACE program has grown, and with it the number of POs, the amount of resources spent conducting both trial period and on-going audits of POs has significantly increased. We must balance the responsibilities of ensuring that all of our beneficiaries are receiving quality care with our duty to effectively manage our resources and ensure proper oversight over all of the programs we manage. Sections 1893 and 1894 of the Act do not require the current level of monitoring.

Consequently, we believe that the frequency of ongoing reviews of POs beyond their trial period should occur based on a risk assessment that takes into account the PO's performance level and compliance with the significant requirements of sections 1834 and 1934 of the Act and the PACE regulations. Therefore, we are proposing to delete the language in § 460.192(b) that requires onsite review every 2 years and replace it with that requirement that CMS, in cooperation with the state administering agency, will conduct reviews of the operations of POs as appropriate, by utilizing a risk assessment as the means of selecting which POs will be audited each year. This risk assessment will rely largely on the organization's past performance and ongoing compliance with CMS and state requirements. However, the risk assessment will take into account other information that could indicate a PO needs to be reviewed, such as participant complaints or access to care concerns. This would mirror our approach in selecting organizations for audit in other programs such as the MA and Part D programs, which is a data driven, risk-based approach. This risk assessment would utilize important measures specific to PACE, as determined by us including, but not limited to, length of time between audits, past performance, and other data measures, such as grievances or level 2 reporting data complaints, as necessary. We believe using MA and Part D is an appropriate model to mirror PACE audits on, because like in MA and Part D, a PO is responsible for providing a beneficiary's benefits in accordance with our regulations. We have discovered through the MA and Part D programs that sponsors have varying degrees of compliance and that auditing organizations based on risk allows CMS to focus on those organizations that require closer scrutiny. Similarly, program experience has shown that POs also have varying degrees of compliance, therefore we believe this will be a useful tool in selecting organizations for audit. This proposal, if finalized, would allow continued oversight and monitoring in the PACE program, with better targeting of resources based on the relative risk each organization presents.

2. Corrective Action (§ 460.194)

Section 460.194(a) requires a PO to take action "to correct deficiencies identified during reviews." However, there has been some uncertainty as to which circumstances trigger the requirement that a PO take action to correct deficiencies. We are proposing to revise this regulation to clarify for POs the range of circumstances under which CMS or the SAAs may identify deficiencies that would require action by the POs to correct those deficiencies. We are proposing to change § 460.194(a) to state that a PO must take action to correct deficiencies identified by CMS or the SAA as a result of the following:

- Ongoing monitoring of the PO;
- Reviews and audits of the PO;
- Complaints from PACE participants or caregivers; and
- Any other instance CMS or the SAA identifies programmatic deficiencies requiring correction.

We are proposing this change to specify that corrective actions will be required to address deficiencies identified by CMS or the SAA through any of these mechanisms.

3. Disclosure of Review Results (§ 460.196)

PACE participants are some of the frailest and most vulnerable members of the Medicare and Medicaid programs, and we recognize that in some cases they may be unable to fully grasp the nature of our review results and use them to make decisions about their healthcare. Our reviews measure the PO's compliance with a variety of CMS requirements, such as the ability of the PO to deliver medically necessary healthcare and medications to their participants. Currently, the regulations require that POs make their review results available in a location that is readily accessible to their participants, without mention of accessibility to other parties. We believe that not only participants but also their family members, caregivers, or authorized representatives should have access to that information in order to better inform their decisions about the participants' healthcare. Therefore, we are proposing to amend § 460.196(d) to ensure that POs make review results available for examination not just by PACE participants, but by those individuals who may be making decisions about PACE participants' care, such as family members, caregivers and authorized representatives, because we believe they should be fully aware of the PO's performance and level of compliance with statutory and regulatory requirements. We also encourage POs to make review results available to other potential participants and the public, for example, by releasing a summary of the reports online. Posting comprehensive review results online would satisfy PO requirements under the proposed § 460.196(d).

M. Subpart L—Data Collection, Record Maintenance, and Reporting

1. Maintenance of Records and Reporting of Data (§ 460.200)

In accordance with sections 1894(e)(3)(A) and 1934(e)(3)(A) of the Act, § 460.200 requires POs to collect data, maintain records, and submit reports, as required by CMS and the SAA. Section 460.200(f)(1) states that a PO must retain records for the longest of the following periods: (i) The period of time specified in state law; (ii) 6 years from the last entry date; (iii) For medical records of disenrolled participants, 6 years after the date of disenrollment. We are proposing to change the requirements in paragraphs (f)(1)(ii) and (iii) from 6 years to 10 years for consistency with the statute of limitations under the False Claims Act (31 U.S.C. 3731(b)(2)). For enrollee records, under § 460.200(f)(1)(ii) and (iii), the 10-year requirements would apply only to records of new and existing enrollees in the PO. Medicare Advantage requirements at § 422.504(d), Medicare Part D requirements at § 423.505(d), and other CMS programs' record retention requirements, all conform to the statute of limitations for the discovery of violations under the False Claims Act. We also note that POs that offer qualified prescription drug coverage currently must comply with the Medicare Part D record retention requirement in § 423.505(d). The 10-year record retention policy is also consistent with recordkeeping requirements under the Medicaid Drug Rebate Program (§ 447.510(f)). To ensure we have proper oversight for investigating the complex payment and other relationships associated with delivery of Medicare and Medicaid benefits under the PACE program, our proposal would extend this requirement to all PACE records for consistency with these programs.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the sections of this proposed rule that contain information collection requirements.

A. Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2015 National Occupational Employment and Wage Estimates for all salary estimates (*www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 2 presents the mean hourly wage, the cost of fringe benefits and support costs (calculated at 100 percent of salary), and the adjusted hourly wage for the occupation code, 29–9000, "Other Healthcare Practitioners and Technical occupations," in the occupational category 29–0000, "Healthcare Practitioners and Technical Occupations." This code was selected since it includes PO, CMS and State staff working in healthcare but who do not have specialist or technical specialist titles.

TABLE 2—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

BLS Occupation title	BLS Occupation code	BLS Mean hourly wage ($/hr)	Fringe benefits and support costs ($/hr)	Adjusted hourly wage ($/hr)
Other Technical Occupations (hereinafter, technical staff)	29–9000	29.72	29.72	59.44

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent for fringe benefits and support costs. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, there is no practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

In performing estimations, one-time costs and savings are annualized over 3 years.

B. Proposed Information Collection Requirements (ICRs)

1. ICRs Regarding Global Change for Quality Assessment and Performance Improvement (Part 460)

We are proposing to replace all references to "quality assessment and performance improvement" to read "quality improvement" in §§ 460.32(a)(9), 460.60(c), 460.62(a)(7), 460.70(b)(1)(iii), 460.120(f), 460.122(i), 460.130(a), 460.132(a) and (c)(3), 460.134(a), 460.136(a), (b), and (c), 460.138(b), and 460.172(c). The change would also affect the heading for subpart H and the section headings for §§ 460.132, 460.134, and 460.136. For each PO, we estimate a one-time burden of 1 hour at $59.44/hr for technical staff to replace or amend existing written materials with the updated term. In aggregate, when annualized over 3 years, we estimate a burden of $2,357.79 in each of the 3 years (119 PO × 1 hour × 59.44/hour ÷ 3) The proposed requirements and revised burden will be submitted to OMB under control number 0938–0790 (CMS–R–244).

2. ICRs Regarding Application Requirements (§ 460.12)

While § 460.12 sets forth general application requirements for an entity seeking to become a PO, current regulations do not specify the process for an existing PO to submit an application to expand its service area and/or add a new PACE center site. In this proposed rule, § 460.12(a) would be revised to specify that this section also applies to expansion applications. This change would codify (in the CFR) the current *Programs of All-Inclusive Care* *for the Elderly (PACE) Manual* requirements pertaining to application submissions.

Until recently, a PACE application was submitted in hard copy format. Applications were often hundreds of pages long, expensive to reproduce and transmit, and administratively inefficient. This proposed rule would add the phrase "in the form and manner specified by CMS" under § 460.12(a) when describing the submission of a complete application to CMS. This change would provide flexibility in the submission of applications, supporting documentation, and CMS notifications. With this change CMS expects that PACE applications will be submitted in a fully electronic submission process, thereby reducing the expense of submitting a hard copy application. CMS has successfully transitioned other programs to a fully electronic submission process, thereby facilitating a more organized and streamlined review. Section 460.12(b) requires that a PO's application must be accompanied by an assurance (from the SAA of the state in which the program is located) indicating that the state considers the entity to be qualified as a PO and is willing to enter into a program agreement with the entity. In this proposed rule, § 460.12(b)(2) would require that an expansion application include the state's assurance that the state is willing to amend the PACE program agreement to include new PACE center sites and/or expand its service area. This change would codify the current PACE manual provisions pertaining to the practice of application submissions.

Section 460.12(c)(1) would require that an entity submitting an application to become a PO or a PO submitting an application to expand its service area must describe the proposed service area in its application. As this is current practice, the proposed action would not add any new burden to the applicants. To become a PO, the requirement for an entity to submit an application that describes the proposed service area is set out under § 460.22. The application for a PO to expand its service area also requires this information. The requirements and burden are currently approved by OMB under control number 0938–0790 (CMS–R–244).

3. ICRs Regarding the Submission and Evaluation of Waiver Requests (§ 460.26)

Section 460.26 discusses the requirements to submit a waiver seeking to modify a PACE program requirement. Although current regulations require that a waiver request be submitted to the SAA for review prior to submitting to CMS, this proposed rule would reorganize the CFR text so it is clear that both current POs and applicants must submit a waiver request to the SAA prior to submitting their request to CMS. It also would clarify that a waiver request may be submitted with the application or as a separate document. The requirements for submitting a waiver request are being clarified and are not changing our currently approved burden estimates for POs and applicants. The preceding requirements and burden are approved by OMB under control number 0938–0790 (CMS–R–244).

4. ICRs Regarding Notice of CMS Determination on Waiver Requests (§ 460.28)

Section 426.28(a) discusses the timeframes for CMS to make a determination and to send notification about the approval or denial of a waiver request. While current language requires that CMS approve or deny a waiver request within 90 days of receipt of the request, this rule proposes to revise the requirement so that CMS must approve or deny a request after receiving a complete waiver request. Since CMS will request additional information from the PO if a waiver request is not complete, this change is needed since it is not possible to make an informed decision for approval or denial when important information is missing. The proposed change would help facilitate CMS' ability to work with the PO or applicant to ensure that the request includes all necessary information. The change is not expected to change the burden on POs and applicants. Our current burden estimate approved by OMB under control number 0938–0790 (CMS–R–244) accounts for receiving incomplete requests and the submission of additional information.

5. ICRs Regarding the Program Agreement (§ 460.32)

Sections 460.32 and 460.180(b) require that PACE program agreements specify the methodology used to calculate the Medicare capitation rate. For the Medicaid capitation rates, however, the PACE program agreement must specify the actual amount negotiated between the POs and the SAA (see §§ 460.32(a)(12) and 460.182(b)). We propose to amend § 460.32(a)(12) by requiring that the program agreement include the Medicaid capitation rates or the Medicaid payment rate methodology. This would be in addition to the current requirement to include the methodology used to calculate the Medicare capitation rate.

Medicaid capitation rates are developed and updated by the states (in negotiation with the POs) and approved by CMS. Operationally, states submit documentation to CMS to support their proposed PACE Medicaid capitation rates. CMS reviews the documentation to ensure the proposed rates are in compliance with the requirements of § 460.182 and provides the state with written approval of the rates. The Medicaid capitation rates are then communicated to the POs by the state in writing.

Since current regulations require that the PACE program agreement include the Medicaid capitation rates, this also requires that the PACE program agreement be updated to reflect the rates each time they change, which for most PACE organizations is annually. We do not believe it is always practical or efficient to include the actual Medicaid capitation rates in the PACE program agreement. We also believe this practice provides no value to the PO, the state, or to CMS. In response, we propose to amend § 460.32(a)(12) by requiring that the program agreement include the Medicaid capitation rates or the Medicaid payment rate methodology. We do not estimate any additional burden to the PO or the state as a result of this change. During the next regular rate update, the PACE program agreement may be revised to include the state's Medicaid payment rate methodology instead of the new rates. This would have been an update that would have already been required under the current requirements at § 460.32(a)(12).

By removing the requirement going forward that PACE program agreements be updated to include the Medicaid capitation rates, we estimate that each PO would save ½ hour. We therefore estimate an aggregate annual reduction of $3,536.68 (119 PO × 0.5 hour × 59.44 per hour).

The revised requirement will be submitted to OMB for approval under control number 0938–0790 (CMS–R–244).

6. ICRs Regarding a Governing Body (§ 460.62)

Section 460.62 focuses on the ability of the PO's governing body to provide effective administration in an outcome-based environment. While § 460.62(a)(7) requires that a PO's governing body be able to administer a quality improvement program, this proposed rule would revise this section by requiring that the PO's governing body must be able to administer a quality improvement program as described in the general rule regarding quality improvement programs found in § 460.130.

Section 460.132 already requires that the PO implement a quality improvement plan and that the governing body must review the quality improvement plan on an annual basis. Revisions to § 460.62(a)(7) would simply clarify what quality improvement program the PO's governing body must be able to administer. The burden associated with the aforementioned requirements is captured in § 460.132 which is approved by OMB under control number 0938–0790 (CMS–R–244).

Section 460.62(a)(8) would be added to require that the PO's governing body must have full legal authority and responsibility for adopting and implementing effective compliance oversight requirements as described in § 460.63. While the requirement to adopt and implement the compliance oversight requirements do not impose any new reporting requirements, the burden associated with the compliance oversight requirements are set out in the Regulatory Impact Analysis section under § 460.63.

7. ICRs Regarding Personnel Qualifications for Staff With Direct Participant Contact (§ 460.64(a)(3))

Section 460.64(a)(3) requires that employees or contractors of the PO who have direct participant contact must have 1 year of experience working with a frail or elderly population. This proposed rule would amend this requirement by allowing the PO to hire employees or contractors with less than 1 year of experience working with a frail or elderly population as long as they meet all other qualification requirements under § 460.64(a) and receive appropriate training on working with a frail or elderly population upon hiring.

Section 460.71 already includes requirements regarding training of staff and competency evaluations for employees and contracted staff furnishing care directly to participants. In this regard the revisions to § 460.64(a)(3) would not have any effect on the burden that is currently approved by OMB under control number 0938–0790 (CMS–R–244).

8. ICRs Regarding Program Integrity (§ 460.68(a))

Section 460.68 was established to guard against potential conflicts of interest or certain other risks individuals and organizations could present to the integrity of the PACE program. In this proposed rule, the amendments to § 460.68(a)(3) would enable POs to determine whether an individual's contact with participants would pose a potential risk because the individual has been convicted of criminal offenses related to physical, sexual, drug, or alcohol abuse or use, rather than entirely prohibiting the hiring of such individuals. To provide POs with more safeguards against potential hires that may pose a risk to participants, we are also adding language in § 460.68(a)(4) and (5) similar to the requirements found in regulations governing Long Term Care facilities.

In § 460.68(a)(4), we propose to add a new restriction that would prevent POs from employing individuals or contract with organizations or individuals who have been found guilty of abusing, neglecting, or mistreating individuals by a court of law or who have had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents, or misappropriation of their property. Further, in § 460.68(a)(5) we propose to add a new restriction that would prevent POs from employing individuals or contracting with organizations or individuals who have been convicted of any of the crimes listed in section 1128(a) of the Act. We anticipate that these changes may result in employers revising their policies related to the hiring of individuals with criminal histories and revising their employment applications. We estimate a one-time burden of 10 hr at $59.44/hr for technical staff to make these revisions. In aggregate, we estimate a burden annualized over 3 years of $23,577.87 in each year (10 hours × 119 PO × 59.44 ÷ 3). The proposed requirements and revised burden will be submitted to OMB under control number 0938-New (CMS–0938–0790 (CMS–R–244)).

9. ICRs Regarding Marketing (§ 460.82)

Section 460.82 sets out requirements governing the marketing activities of POs. This proposed rule would prohibit POs from using non-employed agents/brokers, including contracted entities to market PACE programs. We are also proposing to expand the scope of prohibited marketing practices to include additional means of marketing through unsolicited contact. We are also proposing to remove § 460.82(f) which requires that POs establish, implement, and maintain a documented marketing plan with measurable enrollment objectives and a system for tracking its effectiveness. CMS no longer believes that the documented marketing plan provides value as we already review all marketing materials used by a PO and enrollments are already tracked by CMS. We do not believe that a marketing plan is an integral piece of the PACE program and does not provide value to the PO or to CMS. In response we anticipate that these changes may result in POs needing to review existing policies and procedures to make sure they incorporate the changes as well as to update any current marketing materials that may need to be changed as a result of the regulatory changes.

We estimate a one-time burden of 5 hr at $59.44/hr for technical staff to revise the written marketing policies and materials. In aggregate, when annualized over 3 years we estimate $11,788.93 in each year (119 PO × 5 hours × 59.44 ÷ 3).

At the same time, we estimate a burden reduction related to removing the requirements for the marketing plan and the tracking system. We estimate this will save each PO 10 hours per year. We estimate an aggregate reduction of $70,733.60 in each year (119 PO × 10 hour × 59.44). The proposed requirements and revised burden will be submitted to OMB under control number 0938–0790 (CMS–R–244).

10. ICRs Regarding [the] Interdisciplinary Team (§ 460.102)

Section 460.102 currently states that primary medical care must be furnished to a participant by a PACE primary care physician. This proposed rule would allow primary care to be furnished by a "primary care provider" rather than a "primary care physician." The PO must revise or develop policies and procedures for the oversight of its primary care providers.

We estimate a one-time burden of 1 hr at $59.44/hr for technical staff to update their PO's policy and procedures. We estimate an aggregate burden annualized over 3 years of $2357.79 in each year (119 PO × 1 hour × 59.44/hr ÷ 3). The proposed requirements and revised burden will be submitted to OMB under control number 0938–0790 (CMS–R–244).

11. ICRs Regarding [the] Participant Assessment (§ 460.104)

Section 460.104 sets forth the requirements for PACE participant assessments. The information obtained through the assessment is the basis for the plan of care developed by the IDT. If the IDT determines from its assessment that certain services do not need to be included in the participant's care plan, revisions to § 460.104(b) would require that the IDT must document in the care plan the reasons why such services are not needed and are not being included in the plan.

As both the development of and updates to the care plan are a typical responsibility for the IDT we believe that any burden associated with this would be incurred by persons in their normal course of business. We believe that the burden associated with the development of and updates to the care plan are exempt from the PRA in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities and is a usual and customary business practice.

Currently, § 460.104(c) sets forth the requirements for periodic reassessments, including semiannual and annual reassessments. In this rulemaking, we are proposing to remove the requirement in § 460.104(c)(2) requiring annual reassessments by the physical therapist, occupational therapist, dietician, and home care coordinator.

While this requirement was subject to the PRA, we believed that the burden associated with this requirement is exempt from the PRA in accordance with 5 CFR 1320.3(b)(2). We believe that the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities.

12. ICRs Regarding [the] Plan of Care (§ 460.106)

Section 460.106(a) requires that a participant's plan of care be developed by the IDT promptly. This proposed rule would amend this requirement by specifying that the IDT must develop the plan of care within 30 days of the participant's date of enrollment. Section 460.106(b) proposes the following three new requirements pertaining to the content of the plan of care: (1) The plan must utilize the most appropriate interventions for each of the participant's care needs that advances the participant toward the measurable goals and desired outcomes; (2) the plan must identify each intervention and how it will be implemented; and (3) the plan must identify how each intervention will be evaluated to determine progress in reaching specified goals and desired outcomes.

We believe these changes add clarification to the current requirements in § 460.106 on how to develop and implement a plan of care, and document any changes made to the plan of care in the participant's medical record. CMS expects POs to keep up-to-date with current practice standards related to plans of care and believes that most POs already implement these requirements. As we stated in the 1999 IFC (64 FR 66276) the development of the plan of care is subject to the PRA, however, we believed that the burden associated with this revision is exempt from the PRA in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities.

13. ICRs Regarding Explanation of Rights (§ 460.116)

Section 460.116 sets forth requirements for POs with respect to explanation of rights, such as having written policies and procedures on these rights, explaining the rights, and displaying the rights. Section 460.116(c)(1) provides that the PO must write the participant rights in English and in any other principal languages of the community. The proposed rule requires that if a state has not established a standard for making the principal language determination, a principal language of the community is any language spoken regularly at home by at least 5 percent of the individuals in the PO's service area.

We anticipate that these changes may result in technical staff revising documents. We estimate a one-time burden of 5 hr at $59.44/hr for technical staff to revise the written material about participant rights. In aggregate, when annualized over 3 years we estimate $11,788.93 in each year (119 PO × 5 hours × 59.44/hr. ÷ 3).

Section 460.116(c)(2) states that the PO must display the participant rights in a prominent place in the PACE center. The proposed rule would require to add the word "PACE" before the words "participant rights" to specify that participant rights specific to PACE must be displayed. We anticipate that these changes may result in technical staff revising documents. Since the only change is the addition of the word "PACE" and redisplay of notices, we estimate a one-time burden of ½ hr at $59.44/hr for technical staff to revise the notices. In aggregate, when annualized over 3 years we estimate $1,178.89 in each year (119 PO × ½ hours × 59.44/hr. ÷ 3). The proposed requirements and revised burden will be submitted to OMB under control number 0938–0790 (CMS–R–244).

14. ICRs Regarding Quality Improvement General Rule (§ 460.130)

Section 460.130 requires a PO to develop, implement, maintain, and evaluate a quality assessment and performance improvement program which reflects the full range of their services. Section 460.140 refers to additional quality assessment activities related to reporting requirements. This proposed rule would combine § 460.140 with § 460.130 in an effort to combine all the general rules for quality improvement under the first section in subpart H. It would also remove in § 460.140 its entirety. This regulatory reorganization has no impact on any requirements or burden estimates.

15. ICRs Regarding Quality Performance Reporting (§ 460.132)

Section 460.132 sets forth requirements with respect to a Quality Assessment and Performance Improvement (QAPI) plan. This proposed rule would revise § 460.132(a) and (c)(3) by referring to quality improvement (QI) plan. Revisions would also require that POs have a written quality improvement plan that is collaborative and interdisciplinary in nature. Because POs are already required to have a written QAPI plan, we anticipate added burden to update the plan by making it more collaborative and interdisciplinary in nature.

We estimate a one-time burden of 1 hour at $59.44/hr to update material. We estimate it would take in aggregate, when annualized over 3 years, $2357.79 in each year to update QI plans (119 PO × 1 hour × $59.44/hr ÷ 3). The proposed requirements and revised burden will be submitted to OMB under control number 0938–0790 (CMS–R–244).

16. ICRs Regarding the Enrollment Process (§ 460.152)

Section 460.152(b)(4) states that the PO must notify CMS and the SAA if a prospective participant is denied enrollment. Since this proposed rule would add the phrase, 'in the form and manner specified by CMS" and would simply codify current practice in which such notifications are submitted to CMS and SAA electronically, this action would not revise any requirements or burden estimates. The requirements and burden are approved by OMB under control number 0938–0790 (CMS–R–244).

17. ICRs Regarding the Enrollment Agreement (§ 460.154)

Section 460.154 specifies the general content requirements for the enrollment agreement. Specifically, § 460.154(i) states that the enrollment agreement must provide notification that enrollment in PACE results in disenrollment from any other Medicare or Medicaid prepayment plan or optional benefit. This proposed rule would require additional enrollment agreement language stating that if a Medicaid-only or private pay PACE participant becomes eligible for Medicare after enrollment in PACE, he or she will be disenrolled from PACE if he or she elects to obtain Medicare coverage other than from his or her PO.

We estimate a one-time burden of 1 hour at $59.44/hr to update enrollment materials. We estimate an aggregate cost, annualized over 3 years, of 2357.79, in each year (119 PO × 1 hour × 59.44/hr). The proposed requirements and burden will be submitted to OMB under control number 0938–0790 (CMS–R–244).

18. ICRs Regarding the Enrollment Procedures (§ 460.156)

While § 460.156(a) currently requires that POs provide participants with, among other items, stickers for the participant's Medicare and Medicaid cards, we propose to revise this requirement such that POs would no longer be required to provide participants with stickers for their Medicare and Medicaid cards. Instead, POs would be required to include the PO's phone number on the participant's PO membership card.

Since we would no longer require that POs provide stickers for participants' Medicare and Medicaid cards, we estimate a decrease of 1 minute for each organization. The aggregate savings would be $117.89 (119 PO × 1 minute × 59.44/hr). The revised requirements and burden will be submitted to OMB under control number 0938–0790 (CMS–R–244).

Additionally, we believe that the burden associated with including the phone number of the PO on the PACE membership card is exempt from the PRA in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities and is a customary business practice.

19. ICRs Regarding Involuntary Disenrollment (§ 460.164)

Section 460.164 specifies the conditions under which a PACE participant can be involuntarily disenrolled from a PACE program, including when a participant engages in disruptive or threatening behavior. We have approved several waivers which allow a PO to involuntarily disenroll a participant in situations where the participant's caregiver engages in disruptive or threatening behavior. This rule proposes to permit involuntary disenrollment in situations where the participant's caregiver engages in disruptive or threatening behavior, which is defined as exhibiting behavior that jeopardizes the participant's health or safety, or the safety of the caregiver or others.

The proposed revision would obviate the need for such waivers, thereby reducing the burden on POs, states, and CMS. Since we continue to estimate that fewer than 10 POs would submit this type of waiver request each year, we believe the requirement is not subject to the PRA in accordance with 5 CFR 1320.3(c)(4).

20. ICRs Regarding the Disclosure of Review Results (§ 460.196)

Section 460.196 requires that POs make their review results available in a location that is readily accessible to their participants. The proposed rule would amend § 460.196(d) to ensure that POs make review results available for examination not just by PACE participants, but by those individuals who may be making decisions about PACE participants' care, such as family members, caregivers and authorized representatives, because we believe they should be fully aware of the PO's performance and level of compliance with statutory and regulatory requirements.

We anticipate that these changes may result in technical staff redisplaying documents. We estimate a one-time burden of ½ hr at $59.44/hr for technical staff to redisplay the review results. In aggregate, when annualized over 3 years we estimate $1,178.89 in each year (119 PO × 1/2 hours × 59.44/ hr. ÷ 3) in each year.

21. ICRs Regarding the Maintenance of Records and Reporting of Data (§ 460.200)

In accordance with § 460.200(f)(1), POs must retain records for the longest of the following periods: The period of time specified in state law; 6 years from the last entry date; or for medical records of disenrolled participants, 6 years after the date of disenrollment. This rule proposes to change this requirement from 6 to 10 years.

The current requirements and burden for storing records for 6 years are approved by OMB under control number 0938–0790 (CMS–R–244). We believe that the burden to store for 6 years is sufficient to cover the storage for 4 more years, especially as data are increasingly likely to be stored electronically. As for the storage of electronic records, a server is not needed since a terabyte hard drive costs under $200 and can store a terabyte of data securely. Furthermore, most servers have additional capacity which could be used before more expenses are needed. Thus the expense to go from 6 years to 10 years is minimal.

C. Summary of Annual Burden Estimates for Proposed Requirements

TABLE 3—PROPOSED INFORMATION COLLECTION REQUIREMENTS AND BURDEN *

Section(s) in title 42 of the CFR	OMB Control No.	Respondents	Burden per response (hr)	Cost (+1) or savings (−1)	Cost per hour (hourly wage)	For annual costs: total annual cost (product of 4 columns on right)	For one-time costs: total annualized cost in each of 3 years (product of 4 columns to right of previous column divided by 3)
part 460 (global term change)	0938–0790	119	1	1	$59.44		$2,357.79
460.32 (program agreement)	0938–0790	119	0.5	−1	59.44	(3,536.68)	
460.68(a)	0938–0790	119	10	1	59.44		23,577.87
460.82 (revise policies and written materials)	0938–0790	119	5	1	59.44		11,788.93
460.82 (remove requirements)	0938–0790	119	10	−1	59.44	(70,733.60)	

TABLE 3—PROPOSED INFORMATION COLLECTION REQUIREMENTS AND BURDEN *—Continued

Section(s) in title 42 of the CFR	OMB Control No.	Respondents	Burden per response (hr)	Cost (+1) or savings (−1)	Cost per hour (hourly wage)	For annual costs: total annual cost (product of 4 columns on right)	For one-time costs: total annualized cost in each of 3 years (product of 4 columns to right of previous column divided by 3)
460.102 (update policies and procedures)	0938–0790	119	1	1	59.44		2,357.79
460.116 (Revise explanations of rights)	0938–0790	119	5	1	59.44		11,788.93
460.116 (Redisplay 'participant rights' as 'PACE participant rights')	0938–0790	119	0.5	1	59.44		1,178.89
460.132 (update QI plan)	0938–0790	119	1	1	59.44		2,357.79
460.154 (revise enrollment agreement)	0938–0790	119	1	1	59.44		2,357.79
460.156 (removing sticker requirement)	0938–0790	119	0.017	−1	59.44	(117.89)	
460.196 (Disclosure of review results)	0938–0790	119	0.5	1	59.44		1,178.89
Total				6		(74,388.17)	58,944.67
Total Cost In each of First 3 years							(15,443.50)
Total Cost in Remaining Years							(74,388.17)

D. Submission of PRA-Related Comments

We have submitted a copy of this proposed rule to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections discussed above, please visit CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule and identify the rule (CMS–4168–P) the ICR's CFR citation, CMS ID number, and OMB control number.

PRA-related comments are due October 17, 2016.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "**DATES**" section of the preamble to this proposed rule, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Statement

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

To analyze the impact of this rule we reviewed its 46 provisions. We determined that 21 of the provisions have no cost or savings so we are not discussing them in this statement. Twenty two other provisions are scored in the information collection requirements section and total less than $800,000 in savings or costs. Of the remaining provisions we believe only 3 of them require scoring in the regulatory impact statement. The provision discussed in section III.K.1. of this proposed rule, proposing modification of § 460.182 regarding Medicaid payment, has no savings or cost while the provision discussed in section III.F.3. of this proposed rule, proposing § 460.63 regarding the PACE compliance oversight program, has a burden of about 1.7 million dollars to POs. The provision discussed in section III.L.1. of this proposed rule, proposing modification of § 460.190 regarding monitoring, has a savings of about $700,000 to POs and a savings of about 1 million to the government without any transfer to POs. Additionally, as detailed in, CMS–R–244, there is a $3 million burden associated with the collection of information requirements. Thus the net effect of these provisions is minimal (under $2 million). It follows that the net cost or savings of this proposed rule is under $3 million dollars. The total cost by itself is under $5 million and the total savings by itself is under $2 million.

We discuss these provisions in more detail below.

Compliance Oversight Requirements (§ 460.63 (Discussed in Section III.F.3. of This Proposed Rule))

While current regulations do not require POs to implement compliance programs similar to those required in the regulations governing the MA and Part D programs, this rule proposes to adopt certain compliance oversight requirements through the addition of § 460.63.

Currently, POs participating in the Part D program are required to have a compliance plan with measures that prevent, detect, and correct fraud, waste and abuse as specified in § 423.504(b)(4)(vi) governing the Part D program. This PACE proposal would expand the already existing Part D compliance program for POs offering qualified prescription drug coverage under the Part D program to the totality of the PO's operations and would require them to establish and implement compliance efforts geared toward: (1) Routine monitoring and identification of compliance risks and (2) promptly responding to compliance issues as they are raised, investigating potential compliance problems as identified in the course of self-evaluations and audits, correcting such problems promptly and thoroughly to reduce the potential for recurrence; and ensuring ongoing compliance with CMS requirements.

The burden associated with the requirements under § 460.63 would be the time and effort for each of the 119 POs to develop, adopt, and implement procedures for conducting internal auditing and monitoring to ensure compliance with CMS program requirements. POs would also be required to develop measures to detect, correct, and prevent fraud, waste, and abuse. POs will be required to devote technical staff to developing and implementing these procedures.

We estimate a one-time burden of 150 hours at $59.44 per hour for technical staff to develop the aforementioned procedures and measures at an annualized cost of $353,668 (119 POs × 59.44/hour × 150/3) for each of the first 3 years. We estimated this burden based on our combined experience with compliance programs in MA and Part D. Since we are proposing to utilize two of the same compliance requirements in PACE as are used in MA and Part D, we believe this comparison will be accurate. We then used that experience and modified it to account for POs size and staffing. We believe that given the size of most POs, a one-time burden of 150 hours would be a reasonable estimate on how long it would take to ensure new program materials and measures were developed.

Additionally, once the program has been developed and is running, the PO will have to spend some time going forward monitoring their own compliance, and reporting and responding to any suspected fraud, waste and abuse. We therefore estimate a burden of 200 hours at $59.44 per hour for technical staff to complete these activities including, when warranted, revision of the aforementioned program materials and monitoring measures. Our estimate also includes the routine monitoring and identification of compliance risks as identified in the course of self-evaluations and audits. We estimate total aggregate annual cost at $1,414,672 (119 organizations × 200 hour × $59.44 per hour). Again, given the size of POs and the limited number of participants, we believe this burden to be small, and we believe that 200 hours would cover the ongoing responsibilities of a PO. Included in this 200 hours is PO monitoring of its own compliance; corrective action as a result of that monitoring; and updating PO monitoring measures and procedures.

We are soliciting comments from POs regarding this burden estimate.

Medicaid Payment (§ 460.182 (Discussed in Section III.K.1. of This Proposed Rule))

The proposed provision aims to ensure that the Medicaid rate paid under the PACE program agreement is not only less than what would otherwise have been paid outside of PACE for a comparable population, but is also sufficient for the population served under the PACE program. The proposed regulatory language was introduced to reflect a requirement that has always been met in practice. In other words, the language reflects existing practices. We therefore do not believe this provision will affect spending at all.

Monitoring (§ 460.190 (Discussed in Section III.L.1. of This Proposed Rule))

This provision would result in savings to both the POs and the government without any transfers to the POs. We estimate separately the savings for POs and the government below. To estimate the savings from the monitoring provision we use the following assumptions about audits. These assumptions are based on our experience with audits.

- If this provision is not finalized, we assume 72 audits per year, 34 during PO trial periods, and 38 post trial period (routine) audits.

- If this provision is finalized, we estimate 35 audits per year, 20 during PO trial periods and 15 post trial period (routine) audits.

There are several factors involved in these assumptions. For example, if the regulation is not finalized, an audit must be conducted every 2 years post trial period. If the regulation is finalized, routine audits will be conducted based on a risk assessment. We are soliciting comments on our assumptions about audits.

The following further assumptions are used in estimating costs of an audit for a PO.

- *Personnel:* We estimate:
  - 2 Nurse managers with an hourly average wage of $50.99
  - 1 Executive assistant with an hourly average wage of $17.55
- *Hours:*
  - We estimate 80 hours uniformly per person. 40 hours the week before the audit and 40 hours the week of the audit.
- *Fringe benefits:* We estimate 100 percent (of hourly wage) for Fringe Benefits.

Based on these assumptions, we can compute the difference between 72 and 35 audits per year. The resulting savings per year to POs is $707,617.60. The calculations are exhibited in Table 4.

TABLE 4—ESTIMATES OF SAVINGS TO POS IF THE PROVISION IN SECTION III.L.1. IS FINALIZED

Item	Per audit	Justification for per audit	If regulation not finalized (72 audits/year—34 during trial period and 38 post trial period)	Justification	If regulation finalized (35 audits/year, 20 during trial period, 15 post trial period)	Justification
Hourly wages, Nurse manager—$50.99.	$16,316.80	80 hours per audit (40, week before, 40, week of) × 2 Nurse managers × $50.99, Hourly wage × 2 (Fringe Benefit factor).	$1,174,809.60	$16,316/audit × 72 audits.	$571,088.00	$16,316.80/audit × 35 audits.
Hourly wages, Executive assistant—$17.55.	2,808.00	80 hours per audit (40, week before, 40, week of) × 2 Nurse managers × $17.55, Hourly wage × 2 (Fringe Benefit factor).	202,176.00	2,808/audit × 72 ...	98,280.00	2,808/audit × 35 audits.
Total Costs	19,124.80	....	1,376,985.60	....	669,368.00	
Savings ...	....	....	....	....	707,617.60	

The following further assumptions are used to estimate the cost of an audit for CMS.

- 2.5 FTE (Between 2 and 3 per audit). This number is based on CMS experience across different geographic regions some of which use 2 FTE and some of which use 3 FTE.
- *Hours spent:*
  - ○ 220 hours at the GS–13 level with an hourly average wage of $44.15
  - ○ 40 hours at the GS–15 level with an hourly average wage of $61.37
- *Fringe Benefits:* We estimate 100 percent (of hourly wage) for fringe benefits
- *Travel costs:* The average cost per trip is $1,395. This is based on our experience across several geographic regions.

Based on these assumptions, we can compute the difference between 72 and 35 audits per year. The resulting savings per year to CMS is $1,029,454.70. The calculations are exhibited in Table 5.

TABLE 5—ESTIMATES OF SAVINGS TO GOVERNMENT (CMS) WITHOUT TRANSFER TO POS, IF PROVISION IN SECTION III.L.1. IS FINALIZED

Item	Cost per audit	Justification for per audit cost	If regulation not finalized (72 audits/year—34 during trial period and 38 post trial period)	Justification	If regulation finalized (35 audits/year, 20 during trial period, 15 post trial period)	Justification
Hourly wage GS 13 ($44.15/hr).	$19,426.00	220 hours/audit × $44.15/hr × 2 (Fringe Benefit factor).	$1,398,672.00	$19,426/audit × 72 audits.	$679,910.00	$19,426/audit × 35 audits.
Hourly wage GS 15 ($61.37/hr).	4,909.60	40 hours/audit × $61.37/hr × 2 (Fringe Benefit factor).	353,491.20	4,909.60/audit × 72 audits.	171,836.00	4,909.60/audit × 35 audits.
Travel	3,487.50	2.5 FTE × $1,395 average cost per trip.	251,100.00	3,487.50 × 72 audits.	122,062.50	3,487.50 × 35 audits.
Total Costs	27,823.10	....	2,003,263.20	....	973,808.50	
Savings ...	....	....	....	....	1,029,454.70	

Based on the above analysis, we have determined that this proposed rule does not reach the economic threshold and thus it is neither an ‘‘economically significant rule’’ under E.O. 12866, nor a ‘‘major rule’’ under the Congressional Review Act.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has significant impact on a substantial number of entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by meeting the SBA definition of a small business (having revenues of less than $7.5 million to $38.5 million in any 1 year). Individuals and states are not included in the definition of a small entity. For purposes of the RFA, we estimate 95 percent of POs are nonprofit organizations, and therefore almost all POs are small entities as that term is used in the RFA. However, the proposed requirements would impose negligible cost increases on POs. In addition, the proposed increased flexibility regarding permissible health professionals is likely to be a source of some savings for POs because current regulation that requires some PACE services to be furnished by physicians would be changed to allow those services to be furnished by non-physician practitioners. The same is true for the provisions which allow IDT members to serve multiple roles as part of the IDT and the additional hiring flexibilities. Therefore, we are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that our proposed changes to this regulation would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. As previously explained, this rule will allow for increased staffing flexibility among POs; therefore, we are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. This rule will not mandate any requirements for state, local, or tribal governments nor would it result in expenditures by the private sector meeting that threshold in any 1 year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. Under Executive Order 13132, this regulation will not significantly affect the states beyond what is required and provided for under sections 1894 and 1934 of the Act. It follows the intent and letter of the law and does not usurp state authority beyond what the Act requires. This proposed regulation describes the processes that must be undertaken by CMS, the states, and POs in order to implement and administer the PACE program.

As noted previously, sections 1894 and 1934 of the Act describe a cooperative relationship between the Secretary and the states in the development, implementation, and administration of the PACE program. The following are some examples of areas in which we collaborated with states to establish policy and procedures for PACE, with references to the relevant sections of the Act: (1) Establishing procedures for entering into, extending, and terminating PACE program agreements—sections 1894(e)(1)(A) and 1934(e)(1)(A) of the Act; (2) Establishing procedures for excluding service areas already covered under other PACE program agreements in order to avoid unnecessary duplication of services and impairing the financial and service viability of existing programs—sections 1894(e)(2)(B) and 1934(e)(2)(B) of the Act; (3) Establishing procedures for POs to make available PACE program data—sections 1894(e)(3)(A)(i)(III) and 1934(e)(2)(A)(i)(III) of the Act; (4) In conjunction with the PO, developing and implementing health status and quality of life outcome measures for PACE participants—sections 1894(e)(3)(B) and 1934 (e)(3)(B) of the Act; (5) Conducting comprehensive annual reviews of POs during the trial period—sections 1894(e)(4)(A) and 1934(e)(4)(A) of the Act; 6) Establishing the frequency of ongoing monitoring—sections 1894(e)(4)(B) and 1934(e)(4)(B) of the Act; (7) Establishing a mechanism for exercising enforcement authority—sections 1894(e)(6)(A) and 1934(e)(6)(A) of the Act. For this reason, prior to publishing the 2006 final rule, we obtained state input in the early stages of policy development through conference calls with state Medicaid agency representatives. The Act requires the states to designate the agency of the state responsible for the administration of the PACE program. Although the state may designate the state Medicaid agency to administer the PACE program, another agency may be named. The eight agencies that volunteered to participate in these discussions represented a balanced view of states; some with PACE demonstration site experience and some who were not yet involved with PACE, but were interested in providing input to establish a new long term care optional benefit. The calls were very productive in understanding the variety of state concerns inherent in implementing a new program. In addition, in order to formulate processes to operationalize the PACE program, we have maintained ties with state representatives through monthly conference calls to obtain information on a variety of topics including the applications review and approval process, data collection needs, and enrollment/disenrollment issues. We are committed to continuing this dialogue with states to ensure this cooperative atmosphere continues as we administer the PACE program. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities. Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 460

Aged, Health care, Health records, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 1. The authority citation for part 423 continues to read as follows:

Authority: Sections 1102, 1106, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1306, 1395w–101 through 1395w–152, and 1395hh).

§ 423.4 [Amended]

■ 2. In § 423.4, amend paragraph (4) in the definition of "Service area (Service area does not include facilities in which individuals are incarcerated.)" by removing the reference "§ 460.22 of this chapter" and adding in its place the reference "§ 460.12(c) of this chapter".

PART 460—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

■ 3. The authority citation for part 460 continues to read as follows:

Authority: Secs. 1102, 1871, 1894(f), and 1934(f) of the Social Security Act (42 U.S.C. 1302, 1395, 1395eee(f), and 1396u–4(f)).

■ 4. Section 460.3 is added to read as follows:

§ 460.3 Part D program requirements.

PACE organizations offering qualified prescription drug coverage and meeting the definition of a Part D plan sponsor, as defined at § 423.4 of this chapter, must abide by all applicable Part D program requirements in part 423 of this chapter.

■ 5. Section 460.10 is revised to read as follows:

§ 460.10 Purpose.

(a) *Applications.* This subpart sets forth the application procedures for the following:

(1) An entity that seeks approval from CMS as a PACE organization.

(2) A PACE organization that seeks to expand its service area or to add a new PACE center.

(3) A PACE organization that seeks to expand its service area and to add a new PACE center.

(b) *Waiver.* This subpart sets forth the process by which a PACE organization may request waiver of certain regulatory requirements. The purpose of the waivers is to provide for reasonable flexibility in adapting the PACE model to the needs of particular organizations (such as those in rural areas).

■ 6. Section 460.12 is revised to read as follows:

§ 460.12 Application requirements.

(a) *Submission of application.* An individual authorized to act for an entity that seeks to become a PACE organization or a PACE organization that seeks to expand its service area and/or add a PACE center site must submit to CMS a complete application in the form and manner specified by CMS that describes how the entity or PACE organization meets all requirements in this part.

(b) *State assurance.* (1) An entity's application to become a PACE organization must include an assurance from the State administering agency of the State in which the program is located indicating that the State considers the entity to be qualified to be a PACE organization and is willing to enter into a PACE program agreement with the entity.

(2) A PACE organization's application to expand its service area and/or add a PACE center site must include an assurance from the State administering agency of the State in which the program is located indicating that the State is willing to amend the PACE program agreement to include the new site and/or expand the PACE organization's service area.

(c) *Service area designation.* (1) An entity submitting an application to become a PACE organization or a PACE organization submitting an application seeking to expand its service area must describe the proposed service area in its application.

(2) CMS, in consultation with the State administering agency, may exclude from designation an area that is already covered under another PACE program agreement to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.

(d) *Service area and/or PACE center site expansion.* CMS and the State administering agency will only approve a service area expansion or PACE center site expansion after the PACE organization has successfully completed its first trial period audit and, if applicable, has implemented an acceptable corrective action plan.

■ 7. Section 460.18 is amended by:

■ a. Revising the introductory text of the section.

■ b. Revising paragraph (b).

■ c. Removing paragraph (c).

The revisions read as follows:

§ 460.18 CMS evaluation of applications.

CMS evaluates an application on the basis of the following information:

* * * * *

(b) Information obtained by CMS or the State administering agency through on-site visits or any other means.

■ 8. Section 460.20 is amended by:

■ a. Revising paragraph (a) introductory text and removing paragraph (a)(3).

■ b. Redesignating paragraphs (b) through (d) as paragraphs (c) through (e).

■ c. Adding a new paragraph (b).

■ d. Revising newly redesignated paragraphs (c) through (e).

The revisions and addition read as follows:

§ 460.20 Notice of CMS determination.

(a) *Time limit for notification of determination.* Within 90 days, or 45 days for applications set forth in § 460.10(a)(2), after an entity submits a complete application to CMS, CMS takes one of the following actions in the form and manner specified by CMS:

* * * * *

(b) *Complete application.* An application is only considered complete when CMS receives all information necessary to make a determination regarding approval or denial.

(c) *Additional information requested.* If CMS determines that an application is not complete because it does not include sufficient information to make a determination, CMS will request additional information within 90 days, or 45 days for applications set forth in § 460.10(a)(2), after the date of submission of the application.

(1) The time limits in paragraph (a) of this section do not begin until CMS receives all requested information and the application is complete.

(2) If more than 6 months elapse between the date of initial submission of the application and the entity's response to the CMS request for additional information, the entity must update the application to provide the most current information and materials related to the application.

(d) *Deemed approval.* An entity's application to become a PACE organization is deemed approved if CMS fails to act on the complete application within 90 days, after the later of the following dates:

(1) The date the application is submitted by the organization.

(2) The date CMS receives all requested additional information.

(e) *Date of submission.* For purposes of the time limits described in this section, the date that an application is submitted to CMS is the date on which the application is delivered to the address designated by CMS.

§ 460.22 [Removed]

■ 9. Section 460.22 is removed.

■ 10. Section 460.26 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 460.26 Submission and evaluation of waiver requests.

(a)(1) A PACE organization, or an entity submitting an application to become a PACE organization, must submit its waiver request through the State administering agency for initial review. The State administering agency forwards waiver requests to CMS along with any concerns or conditions regarding the waiver.

(2) Entities submitting an application to become a PACE organization may submit a waiver request as a document separate from the application or in conjunction with and at the same time as the application.

(b) CMS evaluates a waiver request from a PACE organization or PACE applicant on the basis of the following information:

* * * * *

■ 11. Section 460.28 is revised to read as follows:

§ 460.28 Notice of CMS determination on waiver requests.

(a) *General.* Within 90 days after receipt of a complete waiver request, CMS takes one of the following actions, in the form and manner specified by CMS:

(1) Approves the waiver request.

(2) Conditionally approves the waiver request and notifies the PACE applicant.

(3) Denies the waiver request and notifies the PACE organization or PACE applicant of the basis for the denial.

(b) *Additional information requested.* A waiver request is only considered complete when CMS receives all information necessary to make a determination regarding approval or denial. If CMS determines that the waiver request is not complete because it does not include sufficient information to make a determination, CMS will request additional information from the PACE organization or PACE applicant. The 90-day time limit in paragraph (a) of this section will start when CMS receives the complete waiver request.

(c) *Waiver approval.* A waiver request is deemed approved if CMS fails to act on the request within 90 days after CMS receives a complete waiver request.

(d) *Withdrawal of CMS approval for good cause.* (1) CMS in consultation with the State administering agency may withdraw approval of a waiver for good cause.

(2) If the waiver approval is withdrawn, CMS must notify the PACE organization or PACE applicant and the State administering agency that approval of a waiver has been withdrawn and the reason for doing so and must specify the effective date of the withdrawal in the notice.

■ 12. Section 460.32 is amended by revising paragraphs (a)(9) and (12) to read as follows:

§ 460.32 Content and terms of PACE program agreement.

(a) * * *

(9) A description of the organization's quality improvement program.

* * * * *

(12) The state's Medicaid capitation rate or Medicaid payment rate methodology, and the methodology used to calculate the Medicare capitation rate.

* * * * *

■ 13. Section 460.40 is revised to read as follows:

§ 460.40 Violations for which CMS may impose sanctions.

(a) In addition to other remedies authorized by law, CMS may impose any of the sanctions specified in §§ 460.42 and 460.46, if CMS determines that a PACE organization commits any of the following violations:

(1) Fails substantially to provide to a participant medically necessary items and services that are covered PACE services, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) the participant.

(2) Involuntarily disenrolls a participant in violation of § 460.164.

(3) Discriminates in enrollment or disenrollment among Medicare beneficiaries or Medicaid beneficiaries, or both, who are eligible to enroll in a PACE program, on the basis of an individual's health, functional, cognitive or psychosocial status or need for health care services.

(4) Engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment, except as permitted by § 460.150, by Medicare beneficiaries or Medicaid beneficiaries whose medical condition or history indicates a need for substantial future medical services or long term services and supports.

(5) Imposes charges on participants enrolled under Medicare or Medicaid for premiums in excess of the premiums permitted.

(6) Misrepresents or falsifies information that is furnished to—

(i) CMS or the State under this part; or

(ii) An individual or any other entity under this part.

(7) Prohibits or otherwise restricts a covered health care professional from advising a participant who is a patient of the professional about the participant's health and functional status, medical care, or treatment for the participant's condition or disease, regardless of whether the PACE program provides benefits for that care or treatment, if the professional is acting within his or her lawful scope of practice.

(8) Operates a physician incentive plan that does not meet the requirements of section 1876(i)(8) of the Act.

(9) Employs or contracts with any individual who is excluded from participation in Medicare or Medicaid under section 1128 or section 1128A of the Act (or with any entity that employs or contracts with that individual) for the provision of health care, utilization review, medical social work, or administrative services.

(b) If CMS or the State administering agency makes a determination that could lead to termination of a PACE program agreement under § 460.50, CMS may impose any of the sanctions specified at §§ 460.42 and 460.46.

■ 14. Section 460.46 is amended by:

■ a. Adding a note to paragraph (a).

■ b. Removing the reference "§ 460.40 (c) or (d)" in paragraph (a)(1) and adding in its place the reference "§ 460.40(a)(3) or (4)".

■ c. Removing the reference "§ 460.40(e)" in paragraph (a)(2) and adding in its place the reference "§ 460.40(a)(5)".

■ d. Removing the reference "§ 460.40(f)(1)" in paragraph (a)(3) and adding in its place the reference "§ 460.40(a)(6)(i)".

The addition reads as follows:

§ 460.46 Civil money penalties.

(a) * * *

Note to paragraph (a). These amounts will be adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Sec. 701 of Public Law 114–74) and updated amounts will be published in accordance with any amendments to 42 CFR 1003.102.

* * * * *

■ 15. Section 460.60 is amended by:

■ a. Removing paragraph (a).

■ b. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c).

■ c. Revising newly redesignated paragraphs (b) and (c)(3).

■ d. Adding a new paragraph (d).

The revisions and addition read as follows:

§ 460.60 PACE organizational structure.

* * * * *

(b) *Medical director.* The organization must employ, or contract with a physician in accordance with § 460.70, to serve as its medical director responsible for the delivery of participant care, for clinical outcomes, and for the implementation, as well as oversight, of the quality improvement program.

(c) * * *

(3) Except as provided in paragraph (d) of this section, a PACE organization planning a change in organizational structure must notify CMS and the State administering agency, in writing, at least 14 days before the change takes effect.

(d) *Change of ownership.* A PACE organization planning a change of ownership must comply with all requirements in 42 CFR part 422, subpart L, and must notify CMS and the State administering agency, in writing, at least 60 days before the anticipated effective date of the change.

■ 16. Section 460.62 is amended by revising paragraph (a)(7) and adding paragraph (a)(8) to read as follows:

§ 460.62 Governing body.

(a) * * *

(7) A quality improvement program as described in § 460.130.

(8) Adopt and implement effective compliance oversight as described in § 460.63.

* * * * *

■ 17. Section 460.63 is added to read as follows:

§ 460.63 Compliance oversight requirements.

A PACE organization must adopt and implement effective compliance oversight requirements, which must include measures that prevent, detect, and correct non-compliance with CMS's program requirements as well as measures that prevent, detect, and correct fraud, waste, and abuse. The compliance oversight program must, at a minimum, include the following core requirements:

(a) Establishment and implementation of an effective system for routine monitoring and identification of compliance risks. The system should include internal monitoring and audits and, as appropriate, external audits, to evaluate the PACE organization, including contractors, compliance with CMS requirements and the overall effectiveness of the compliance oversight program.

(b) Establishment and implementation of procedures and a system for promptly responding to compliance issues as they are raised, investigating potential compliance problems as identified in the course of self-evaluations and audits, correcting such problems promptly and thoroughly to reduce the potential for recurrence, and ensure ongoing compliance with CMS requirements.

(1) If the PACE organization discovers evidence of misconduct related to payment or delivery of items or services, it must conduct a timely, reasonable inquiry into that conduct.

(2) The PACE organization must conduct appropriate corrective actions (for example, repayment of overpayments, disciplinary actions against responsible employees) in response to the potential violation.

(3) The PACE organization should have procedures to voluntarily self-report potential fraud or misconduct related to the PACE program to CMS and the State administering agency.

■ 18. Section 460.64 is amended by revising paragraphs (a) introductory text and (a)(3) and (4) to read as follows:

§ 460.64 Personnel qualifications for staff with direct participant contact.

(a) *General qualification requirements.* Each member of the PACE organization's staff (employee or contractor) that has direct contact with participants must meet the following conditions:

* * * * *

(3) Have 1 year of experience working with a frail or elderly population or, if the individual has less than 1 year of experience but meets all other requirements under paragraph (a) of this section, must receive appropriate training from the PACE organization on working with a frail or elderly population upon hiring.

(4) Meet a standardized set of competencies for the specific position description established by the PACE organization before working independently.

* * * * *

§§ 460.66 and 460.71 [Amended]

■ 19. Section 460.66 is amended by:

■ a. Redesignating paragraphs (b) and (c) as § 460.71(c) and (d), respectively.

■ b. Removing the paragraph (a) designation from § 460.66.

■ 20. Section 460.68 is amended by:

■ a. In paragraph (a)(2), removing the word "or" after the semicolon.

■ b. Revising paragraph (a)(3).

■ c. Adding paragraphs (a)(4) and (5).

The revision and additions read as follows:

§ 460.68 Program integrity.

(a) * * *

(3) If the PACE organization determines that an individual's contact with participants would pose a potential risk because the individual has been convicted of one or more criminal offenses related to physical, sexual, drug, or alcohol abuse or use;

(4) Who have been found guilty of abusing, neglecting, or mistreating individuals by a court of law or who have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents, or misappropriation of their property; or

(5) Who have been convicted of specific crimes for any offense described in section 1128(a) of the Social Security Act.

* * * * *

■ 21. Section 460.70 is amended by:

■ a. Revising paragraph (b)(1)(iii).

■ b. Adding paragraph (d)(6) introductory text.

■ c. Redesignating paragraphs (d)(5)(vi) through (ix) as paragraphs (d)(6)(i) through (iv).

■ d. Revising newly redesignated paragraphs (d)(6)(i), (ii), and (iii).

■ e. In paragraph (e), removing the term "PACE Center services" and adding in its place everywhere it appears the term "PACE center services".

■ f. In paragraph (e)(2), removing the reference "§ 460.98(d)" and adding in its place the reference "§ 460.98(c)".

The revisions and additions read as follows:

§ 460.70 Contracted services.

* * * * *

(b) * * *

(1) * * *

(iii) A contractor must comply with the requirements of this part with respect to service delivery, participant rights, and quality improvement activities.

* * * * *

(d) * * *

(6) With respect to an individual who is contracting as a program director or medical director or to be part of the interdisciplinary team as set forth at §§ 460.60(a) and (b) and 460.102(b), the contract must specify that the individual agrees to:

(i) Perform all the duties related to its position as specified in this part.

(ii) Participate in interdisciplinary team meetings as required.

(iii) Be accountable to the PACE organization.

* * * * *

■ 22. Section 460.71 is amended by revising paragraphs (a)(1) and (b)(4) to read as follows:

§ 460.71 Oversight of direct participant care.

(a) * * *

(1) The PACE organization must provide each employee and all contracted staff with an orientation that includes, at a minimum, the organization's mission, philosophy, policies on participant rights, emergency plan, ethics, the PACE benefit, and any policies related to the job duties of specific staff.

* * * * *

(b) * * *

(4) Be medically cleared for communicable diseases and have all immunizations up-to-date before engaging in direct participant contact as required under § 460.64(a)(5).

* * * * *

■ 23. Section 460.82 is amended by revising paragraphs (c)(1), (e) introductory text, (e)(3), (e)(4), and (e)(5) and removing paragraph (f) to read as follows:

§ 460.82 Marketing.

* * * * *

(c) * * *

(1) In English and in any other principal languages of the community, as determined by the State in which the PACE organization is located. In the absence of a State standard, a principal language of the community is any language that is spoken in the home by at least 5 percent of the individuals in the PACE organization's service area.

* * * * *

(e) *Prohibited marketing practices.* A PACE organization must not use the following marketing practices, which are prohibited:

* * * * *

(3) Gifts or payments to induce enrollment, unless the gifts are of nominal value as defined in CMS guidance, are offered to all potential enrollees without regard to whether

they enroll in the PACE program, and are not in the form of cash or other monetary rebates.

(4) Marketing by any individuals other than the employees of the PACE organization.

(5) Unsolicited door-to-door marketing or other unsolicited means of direct contact, including calling or emailing a potential or current participant without the individual initiating the contact.

§ 460.98 [Amended]

■ 24. Section 460.98 is amended by:

■ a. In the heading for paragraph (d), removing the term "PACE Center" and adding in its place the term "PACE center".

■ b. In paragraph (d)(3), removing the term "Pace center" and adding in its place the term "PACE center".

§ 460.100 [Amended]

■ 25. In § 460.100, amend paragraph (e)(3)(i) by removing the term "POs" and adding in its place the term "PACE organizations" and removing the term "PO" and adding in its place the term "PACE organization".

■ 26. Section 460.102 is amended by:

■ a. Revising paragraphs (a)(1), (b) introductory text, (b)(1), (c) introductory text, (c)(1), (c)(2) introductory text, and (d)(3).

■ b. Redesignating paragraph (e) as paragraph (f).

■ c. Adding a new paragraph (e).

The revisions and addition read as follows:

§ 460.102 Interdisciplinary team.

(a) * * *

(1) Establish an interdisciplinary team, composed of members that fill the roles described in paragraph (b) of this section, at each PACE center to comprehensively assess and meet the individual needs of each participant.

* * * * *

(b) *Composition of interdisciplinary team.* The interdisciplinary team must be composed of members qualified to fill, at minimum, the following roles, in accordance with CMS guidelines. One individual may fill two separate roles on the interdisciplinary team where the individual meets applicable state licensure requirements and is qualified to fill the two roles and able to provide appropriate care to meet the needs of participants.

(1) Primary care provider.

* * * * *

(c) *Primary care provider.* (1) Primary medical care must be furnished to a participant by any of the following:

(i) A primary care physician.

(ii) A community-based physician.

(iii) A physician assistant who is licensed in the State and practices within his or her scope of practice as defined by State laws with regard to oversight, practice authority and prescriptive authority.

(iv) A nurse practitioner who is licensed in the State and practices within his or her scope of practice as defined by State laws with regard to oversight, practice authority and prescriptive authority.

(2) Each primary care provider is responsible for the following:

* * * * *

(d) * * *

(3) The members of the interdisciplinary team, with the exception of the community-based physician in paragraph (c)(1)(ii) of this section, must serve primarily PACE participants.

(e) *Team member qualifications.* The PACE organization must ensure that all members of the interdisciplinary team have appropriate licenses or certifications under State law, act within the scope of practice as defined by State laws, and meet the requirements set forth in § 460.71.

* * * * *

■ 27. Section 460.104 is amended by revising paragraphs (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(3), (a)(4) introductory text, (b), (c), (d) introductory text, (d)(1), and (d)(2) introductory text to read as follows:

§ 460.104 Participant assessment.

(a) * * *

(1) *Basic requirement.* The interdisciplinary team must conduct an initial in-person comprehensive assessment on each participant. The assessment must be completed in a timely manner in order to meet the requirements in paragraph (b) of this section.

(2) *Members present.* As part of the initial comprehensive assessment, each of the following members of the interdisciplinary team must evaluate the participant in person and develop a discipline-specific assessment of the participant's health and social status:

(i) Primary care provider.

* * * * *

(3) *Additional professional disciplines.* At the recommendation of the interdisciplinary team, other professional disciplines (for example, speech-language pathology, dentistry, or audiology) may be included in the initial comprehensive assessment process.

(4) *Initial comprehensive assessment criteria.* The initial in-person comprehensive assessment must at a minimum include the evaluation of:

* * * * *

(b) *Development of plan of care.* Within 30 days of the date of enrollment, the interdisciplinary team must consolidate discipline-specific assessments into a single plan of care for each participant through team discussions and consensus of the entire interdisciplinary team. In developing the plan of care:

(1) If the interdisciplinary team determines that certain services are not necessary to the care of a participant, the reasoning behind this determination must be documented in the plan of care.

(2) Female participants must be informed that they are entitled to choose a qualified specialist for women's health services from the PACE organization's network to furnish routine or preventive women's health services.

(c) *Semi-annual reassessment.* On at least a semi-annual basis, or more often if a participant's condition dictates, the following members of the interdisciplinary team must conduct an in-person reassessment:

(1) Primary care provider.

(2) Registered nurse.

(3) Master's-level social worker.

(4) Other team members that the primary care provider, registered nurse and Master's-level social worker determine are actively involved in the development or implementation of the participant's plan of care.

(d) *Unscheduled reassessments.* In addition to semi-annual reassessments, unscheduled reassessments may be required based on the following:

(1) *A change in participant status.* If the health or psychosocial status of a participant changes, the members of the interdisciplinary team listed in paragraph (c) of this section must conduct an in-person reassessment.

(2) *At the request of the participant or designated representative.* If a participant (or his or her designated representative) believes that the participant needs to initiate, eliminate, or continue a particular service, the members of the interdisciplinary team listed in paragraph (c) of this section must conduct an in-person reassessment.

* * * * *

■ 28. Section 460.106 is amended by revising paragraph (a) and adding paragraphs (b)(3), (4), and (5) to read as follows:

§ 460.106 Plan of care.

(a) *Basic requirement.* Within 30 days of the date of enrollment, the interdisciplinary team members specified in § 460.104(a)(2) must develop a comprehensive plan of care for each participant based on the initial comprehensive assessment findings.

(b) * * *

(3) Utilize the most appropriate interventions for each care need that advances the participant toward a measurable goal and outcome.

(4) Identify each intervention and how it will be implemented.

(5) Identify how each intervention will be evaluated to determine progress in reaching specified goals and desired outcomes.

* * * * *

■ 29. Section 460.112 is amended by:
■ a. Revising paragraph (b)(1)(i).
■ b. Removing paragraph (b)(1)(ii).
■ c. Redesignating paragraph (b)(1)(iii) as paragraph (b)(1)(ii).
■ d. Revising paragraphs (b)(3) and (c)(3).

The revisions read as follows:

§ 460.112 Specific rights to which a participant is entitled.

* * * * *

(b) * * *

(1) * * *

(i) Prior to and upon enrollment in the PACE organization.

* * * * *

(3) To examine, or upon reasonable request, to be helped to examine the results of the most recent review of the PACE organization conducted by CMS or the State administering agency and any plan of correction in effect.

(c) * * *

(3) To disenroll from the program at any time and have such disenrollment be effective the first day of the month following the date the PACE organization receives the participant's notice of voluntary disenrollment as set forth in § 460.162(a).

* * * * *

■ 30. Section 460.116 is amended by revising paragraphs (c)(1) and (2) to read as follows:

§ 460.116 Explanation of rights.

* * * * *

(c) * * *

(1) Write the participant rights in English and in any other principal languages of the community, as determined by the State in which the PACE organization is located. In the absence of a State standard, a principal language of the community is any language that is spoken by at least 5 percent of the individuals in the PACE organization's service area.

(2) Display the PACE participant rights in a prominent place in the PACE center.

§ 460.120 [Amended]

■ 31. In § 460.120, amend paragraph (f) by removing the term "quality assessment and performance improvement" and adding in its place the term "quality improvement".

■ 32. Section 460.122 is amended by revising paragraphs (c)(1) and (i) to read as follows:

§ 460.122 PACE organization's appeals process.

* * * * *

(c) * * *

(1) Timely preparation and processing of a written denial of coverage or payment as provided in § 460.104(d)(2)(iv).

* * * * *

(i) *Analyzing appeals information.* A PACE organization must maintain, aggregate, and analyze information on appeal proceedings and use this information in the organization's internal quality improvement program.

■ 33. Subpart H is amended by revising the heading to read as follows:

Subpart H—Quality Improvement

■ 34. Section 460.130 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 460.130 General rule.

(a) A PACE organization must develop, implement, maintain, and evaluate an effective, data-driven quality improvement program.

* * * * *

(d) A PACE organization must meet external quality assessment and reporting requirements, as specified by CMS or the State administering agency, in accordance with § 460.202.

■ 35. Section 460.132 is amended by revising the section heading and paragraphs (a) and (c)(3) to read as follows:

§ 460.132 Quality improvement plan.

(a) *Basic rule.* A PACE organization must have a written quality improvement plan that is collaborative and interdisciplinary in nature.

* * * * *

(c) * * *

(3) Document and disseminate to PACE staff and contractors the results from the quality improvement activities.

§ 460.134 [Amended]

■ 36. In § 460.134, amend the section heading and paragraph (a) introductory text by removing the term "quality assessment and performance improvement" and adding in its place the term "quality improvement".

§ 460.136 [Amended]

■ 37. Section 460.136 is amended by:
■ a. Removing the term "quality assessment and performance improvement" and adding in its place everywhere it appears the term "quality improvement".
■ b. Removing the term "Quality assessment and performance improvement" and adding in its place everywhere it appears the term "Quality improvement".

§ 460.138 [Amended]

■ 38. In § 460.138, amend paragraph (b) by removing the term "quality assessment and performance improvement" and adding in its place the term "quality improvement".

§ 460.140 [Removed]

■ 39. Section 460.140 is removed.

■ 40. Section 460.150 is amended by revising paragraph (c)(2) to read as follows:

§ 460.150 Eligibility to enroll in a PACE program.

* * * * *

(c) * * *

(2) The State administering agency criteria used to determine if an individual's health or safety would be jeopardized by living in a community setting must be specified in the program agreement.

* * * * *

■ 41. Section 460.152 is amended by revising paragraph (b)(4) to read as follows:

§ 460.152 Enrollment process.

* * * * *

(b) * * *

(4) Notify CMS and the State administering agency in the form and manner specified by CMS and make the documentation available for review.

■ 42. Section 460.154 is amended by revising paragraph (i) to read as follows:

§ 460.154 Enrollment agreement.

* * * * *

(i) Notification that enrollment in PACE results in disenrollment from any other Medicare or Medicaid prepayment plan or optional benefit. Electing enrollment in any other Medicare or Medicaid prepayment plan or optional benefit, including the hospice benefit, after enrolling as a PACE participant is considered a voluntary disenrollment from PACE. If a Medicaid-only or private pay participant becomes eligible for Medicare after enrollment in PACE, the participant will be disenrolled from PACE if he or she elects to obtain Medicare coverage other than from the participant's PACE organization.

* * * * *

■ 43. Section 460.156 is amended by:
■ a. Revising paragraph (a)(2).
■ b. Removing paragraph (a)(4).

The revision reads as follows:

§ 460.156 Other enrollment procedures.

(a) * * *

(2) A PACE membership card that indicates that he or she is a PACE participant and that includes the phone number of the PACE organization.

* * * * *

■ 44. Section 460.162 is revised to read as follows:

§ 460.162 Voluntary disenrollment.

(a) *Effective date.* A participant's voluntary disenrollment is effective on the first day of the month following the date the PACE organization receives the participant's notice of voluntary disenrollment.

(b) *Reasons for voluntary disenrollment.* A PACE participant may voluntarily disenroll from the program without cause at any time.

(c) *Responsibilities of PACE organization.* A PACE organization must ensure that its employees or contractors do not engage in any practice that would reasonably be expected to have the effect of steering or encouraging disenrollment of participants due to a change in health status.

■ 45. Section 460.164 is amended by:
■ a. Redesignating paragraphs (a) through (e) as paragraphs (b) through (f), respectively.
■ b. Adding a new paragraph (a).
■ c. Revising newly redesignated paragraph (b)(1).
■ d. Further redesignating newly redesignated paragraphs (b)(2) through (6) as paragraphs (b)(4) through (8), respectively.
■ e. Adding new paragraphs (b)(2) and (3).
■ f. In newly designated paragraph (b)(4), removing the reference "paragraph (b)" and adding in its place the reference "paragraph (c)".
■ g. Revising newly redesignated paragraphs (c) and (d).

The revisions and additions read as follows:

§ 460.164 Involuntary disenrollment.

(a) *Effective date.* A participant's involuntary disenrollment occurs after the PACE organization meets the requirements set forth in this section and is effective on the first day of the next month that begins 30 days after the day the PACE organization sends notice of the disenrollment to the participant.

(b) * * *

(1) The participant, after a 30-day grace period, fails to pay or make satisfactory arrangements to pay any premium due the PACE organization.

(2) The participant, after a 30-day grace period, fails to pay or make satisfactory arrangements to pay any applicable Medicaid spenddown liability or any amount due under the post-eligibility treatment of income process, as permitted under §§ 460.182 and 460.184.

(3) The participant or the participant's caregiver engages in disruptive or threatening behavior, as described in paragraph (c) of this section.

* * * * *

(c) *Disruptive or threatening behavior.* (1) For purposes of this section, a participant who engages in disruptive or threatening behavior refers to a participant who exhibits either of the following:

(i) A participant whose behavior jeopardizes his or her health or safety, or the safety of others; or

(ii) A participant with decision-making capacity who consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement.

(2) For purposes of this section, a participant's caregiver who engages in disruptive or threatening behavior exhibits behavior that jeopardizes the participant's health or safety, or the safety of the caregiver or others.

(d) *Documentation of disruptive or threatening behavior.* If a PACE organization proposes to disenroll a participant based on the disruptive or threatening behavior of the participant or the participant's caregiver, the organization must document the following information in the participant's medical record:

(1) The reasons for proposing to disenroll the participant.

(2) All efforts to remedy the situation.

* * * * *

■ 46. Section 460.166 is amended by revising the section heading to read as follows:

§ 460.166 Disenrollment responsibilities.

* * * * *

■ 47. Section 460.168 is amended by revising paragraph (a) to read as follows:

§ 460.168 Reinstatement in other Medicare and Medicaid programs.

* * * * *

(a) Make appropriate referrals and ensure medical records are made available to new providers within 30 days.

* * * * *

§ 460.172 [Amended]

■ 48. In § 460.172, amend paragraph (c) by removing the reference "quality assessment and performance improvement" and adding in its place the reference "quality improvement".

■ 49. Section 460.182 is amended by:
■ a. Revising paragraph (b) introductory text.
■ b. Redesignating paragraphs (b)(3) and (4) as paragraphs (b)(4) and (5).
■ c. Adding a new paragraph (b)(3).

The revision and addition read as follows:

§ 460.182 Medicaid payment.

* * * * *

(b) The monthly capitation amount is negotiated between the PACE organization and the State administering agency, and the amount, or the methodology used to calculate the amount, is specified in the PACE program agreement. The amount represents the following:

* * *

(3) Is sufficient and consistent with efficiency, economy and quality of care.

* * * * *

■ 50. Section 460.190 is amended by:
■ a. Revising paragraph (b)(1).
■ b. Redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5).
■ c. Adding a new paragraph (b)(2).

The revisions and addition read as follows:

§ 460.190 Monitoring during trial period.

* * * * *

(b) * * *

(1) An onsite visit to the PACE organization, which may include, but is not limited to, observation of program operations;

(2) Detailed analysis of the entity's substantial compliance with all significant requirements of sections 1894 and 1934 of the Act and this part, which may include review of marketing, participant services, enrollment and disenrollment, and grievances and appeals.

* * * * *

■ 51. Section 460.192 is amended by revising paragraph (b) to read as follows:

§ 460.192 Ongoing monitoring after trial period.

* * * * *

(b) CMS in cooperation with the State administering agency will conduct reviews of the operations of PACE organizations as appropriate, as determined by a risk assessment of each PACE organization which takes into account the PACE organization's performance level and compliance with the significant requirements of sections 1834 and 1934 of the Social Security Act and this part.

■ 52. Section 460.194 is amended by revising paragraph (a) to read as follows:

§ 460.194 Corrective action.

(a) A PACE organization must take action to correct deficiencies identified by CMS or the State administering agency through the following:

(1) Ongoing monitoring of the PACE organization.

(2) Reviews and audits of the PACE organization.

(3) Complaints from PACE participants or caregivers.

(4) Any other instance CMS or the SAA identifies programmatic deficiencies requiring correction.

* * * * *

■ 53. Section 460.196 is amended by revising paragraph (d) to read as follows:

§ 460.196 Disclosure of review results.

* * * * *

(d) The PACE organization must make the review results available for examination in a place readily accessible to participants, their families, their caregivers, and their authorized representatives.

■ 54. Section 460.200 is amended by revising paragraphs (f)(1)(ii) and (iii) to read as follows:

§ 460.200 Maintenance of records and reporting of data.

* * * * *

(f) * * *

(1) * * *

(ii) Ten years from the last entry date.

(iii) For medical records of disenrolled participants, 10 years after the date of disenrollment.

* * * * *

Dated: July 15, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: July 19, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–19153 Filed 8–11–16; 4:15 pm]

BILLING CODE 4120–01–P

Reader Aids

Federal Register

Vol. 81, No. 158

Tuesday, August 16, 2016

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741096000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv. access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, AUGUST

50283–50604	1
50605–51074	2
51075–51296	3
51297–51772	4
51773–52320	5
52321–52588	8
52589–52740	9
52741–52968	10
52969–53244	11
53245–53906	12
56907–54476	15
54477–54708	16

CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9473....................52965
Executive Orders:
13675 (amended by 13734)....................52321
13734....................52321
Administrative Orders:
Notices:
Notice of August 4, 2016....................52587
Memorandums:
Memorandum of July 26, 2016....................51773
Memorandum of August 3 2016....................52323
Memorandum of August 5 2016....................52967

5 CFR

630....................51775

6 CFR

Proposed Rules:
5....................52593

7 CFR

37....................52589
51....................51297
59....................52969
205....................51075
400....................53658
457....................52590
761....................51274
762....................51274
763....................51274
764....................51274
765....................51274
766....................51274
767....................51274
770....................51274
772....................51274
773....................51274
774....................51274
799....................51274
986....................51298
996....................50283
1150....................53245
1205....................51781
1436....................51274
1940....................51274
4279....................54477
4287....................54477
Proposed Rules:
319....................51381, 53334
929....................51383
948....................50406
983....................54520

9 CFR

56....................53247
77....................52325
145....................53247
146....................53247
147....................53247
Proposed Rules:
1....................51386
2....................51386
3....................51386

10 CFR

20....................52974
431....................53907
Proposed Rules:
429....................51812, 53961
430....................52196, 53962
431....................51812, 53961
820....................53337
951....................51140

12 CFR

45....................50605
237....................50605
349....................50605
624....................50605
1221....................50605
1806....................52741
Proposed Rules:
34....................51394
213....................51400
226....................51394, 51404
1013....................51400
1026....................51394, 51404, 54318

13 CFR

126....................51312
Proposed Rules:
115....................52595
120....................52595

14 CFR

13....................51079
25....................51081, 51084, 51086, 51090, 51093, 51095
39....................51097, 51314, 51317, 51320, 51323, 51325, 51328, 51330, 52750, 52752, 52755, 52758, 52975, 53252, 53255, 54908
71....................50613, 52761, 52762, 52991, 52992, 53262, 53263, 53264, 53265, 53912, 53913, 53915
91....................50615
97....................51332, 51334, 51337, 51339
383....................52763
406....................51079
Proposed Rules:
39....................51142, 51813, 51815, 51818, 51821
71....................52369, 53091, 53093, 53342, 53962, 53964

15 CFR

774.....52326
902.....54390

16 CFR

Proposed Rules:
Ch. II.....51824
259.....52780

17 CFR

1.....53266, 54478
3.....54478
23.....54478
37.....54478
43.....54478
45.....54478
46.....54478
170.....54478
242.....53546
Proposed Rules:
3.....51824, 53343
4.....51828
210.....51608
229.....51608
230.....51608
239.....51608
240.....51608
249.....51608
274.....51608

18 CFR

35.....50290
154.....51100
1312.....54498
Proposed Rules:
35.....51726

19 CFR

12.....53916
351.....50617

20 CFR

404.....51100
620.....50298
Proposed Rules:
404.....51412, 54520
416.....54520

21 CFR

11.....50303, 54499
16.....52994
101.....50303, 54499, 54501
514.....52995
610.....52329
1105.....52329
1301.....53846
Proposed Rules:
Ch. II.....53688, 53767
175.....52370
176.....52370
177.....52370
178.....52370
1105.....52371

22 CFR

239.....50618

24 CFR

291.....52998
Proposed Rules:
30.....53095
206.....53095

26 CFR

300.....52766
301.....51795
Proposed Rules:
1.....50657, 50671, 51413
25.....51413
301.....50657, 50671, 51835

28 CFR

35.....53204
36.....53204
Proposed Rules:
0.....53965
31.....52377
44.....53965

29 CFR

1926.....53268
4022.....53921

30 CFR

1241.....50306
Proposed Rules:
250.....53348

32 CFR

237a.....53922
505.....52767
1911.....52591

33 CFR

100.....50319, 50621, 53269
117.....50320, 50621, 52335, 52769, 53270, 53271
165.....50622, 51798, 51801, 52335, 52339, 52769, 53004, 53922
Proposed Rules:
110.....54531
334.....52781

34 CFR

Ch. II.....52341
Ch. III.....50324, 53271
36.....50321

36 CFR

242.....52528

37 CFR

Proposed Rules:
370.....52782

38 CFR

21.....52770
Proposed Rules:
4.....53353
17.....51836

39 CFR

230.....50624
Proposed Rules:
3001.....51145

40 CFR

50.....53006
51.....50330
52.....50336, 50339, 50342, 50348, 50351, 50353, 50358, 50360, 50362, 50626, 50628, 51341, 53008, 53280, 53284, 53290, 53294, 53297, 53300, 53308, 53309, 53924, 53926, 53929, 54502, 54504, 54506
56.....51102
60.....52346, 52778
63.....51114, 52346, 52348
87.....54422
97.....50630
180.....50630, 52348, 53012, 53019, 53931, 54510
257.....51802
271.....53025
300.....53311
1068.....54422
Proposed Rules:
50.....53097
51.....50408
52.....50409, 50415, 50416, 50426, 50427, 50428, 50430, 52388, 53098, 53362, 53365, 53370, 53378, 53978, 54532
63.....51145
122.....50434
152.....51425
162.....51425
166.....51425
180.....53379
257.....51838
271.....53100
300.....53380
745.....52393

41 CFR

Proposed Rules:
Appendix C to Ch. 301.....53979
304.....53979
305.....53979
306.....53979

42 CFR

405.....51116
412.....52056
413.....51970
418.....52144
424.....51116, 51120
455.....51116, 51120
Proposed Rules:
10.....53381
70.....54230
71.....54230
405.....52783
410.....52783
411.....52783
413.....51147
414.....51147, 52783
417.....52783
422.....52783
423.....52783, 54666
424.....52783
425.....52783
447.....53980
460.....52783, 54666
494.....51147
510.....50794
512.....50794

43 CFR

10.....52352

44 CFR

64.....51808, 52353

45 CFR

144.....53031
147.....53031
153.....53031
154.....53031
155.....53031
156.....53031
158.....53031
Ch. IX.....53033

46 CFR

Proposed Rules:
28.....53986
501.....53986
535.....53986

47 CFR

1.....52354
4.....52354
11.....53039
Proposed Rules:
54.....54018
97.....53388

48 CFR

202.....50635
212.....50635
213.....53045
218.....53045
225.....50650
242.....50635
245.....50652
246.....50635
252.....50635, 50650, 50652
609.....51125
649.....51125
1816.....50365
1852.....50365
Proposed Rules:
202.....53101
212.....50652, 53101
215.....53101
234.....53101
239.....53101
246.....50680
252.....50680, 53101

49 CFR

40.....52364
173.....53935
179.....53935
192.....54512
195.....54512
270.....53850
665.....50367
670.....53046
1002.....50652
1040.....51343
Proposed Rules:
391.....52608
1109.....51147
1144.....51149
1145.....51149
1247.....52784
1248.....52784

50 CFR

17.....51348, 51550, 53315
18.....52276
20.....54514
32.....52248
36.....52248
100.....52528
216.....51126, 54390
219.....53061
224.....50394
300.....50401, 51126
600.....51126
622.....51138, 52366
635.....51810
648.....51370, 51374, 52366, 53958, 54518, 54519
660.....51126

679 ....50404, 50405, 51379, 51380, 52367, 52779
Proposed Rules:
Ch. II 51426
Ch. III 51426
Ch. IV 51426
Ch. V 51426
Ch. VI 51426
17 ....52796, 54018
20 53391
229 54019
622 53109
635 51165
648 54533
679 ....50436, 50444, 52394

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 4, 2016

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.